



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, बुधवार, 11 अगस्त, 2010 / 20 श्रावण, 1932

हिमाचल प्रदेश सरकार

**STATE ELECTION COMMISSION HIMACHAL PRADESH**

आर्मसडेल, शिमला-171002, Armsdale, Shimla-171002 Tel. 0177-2620152, 2620159, 2620154, Fax. 2620152

NOTIFICATION

10th August, 2010

**No. SEC: 13-89/2009- 2269-83.**—In exercise of the power vested in it under **Article 243-ZA** of the constitution of India, Section **10(2)** read with Section **22** of the H.P. Municipal (as amended *vide* **Act. No. 12 of 2010**) **Act, 1994 and Rule 24** of the H.P. Municipal Election Rule, 1994, The State Election Commission hereby specifies office wise election symbols for allotment to candidates in the elections to Municipal Councils and Nagar Panchayats in H.P.:—

(A) **Symbol to be allotted to candidates for Member :**

Sr. No.	Name of Symbols	Sr. No.	Name of Symbols
1.	Hand Pump	14.	Lock & Key
2.	Apple	15.	Television

3.	Sewing Machine	सिलाई मशीन	16.	Ceiling Fan	छत का पंखा
4.	Aeroplane	जहाज	17.	Cot	चारपाई
5.	Letter Box	लैटर बॉक्स	18.	Spoon	चमच्च
6.	Railway Engine	रेल का ईंजन	19.	Gas Cylinder	गैस सिलैण्डर
7.	Table	मेज	20.	Ball	गेंद
8.	Bench	बैन्च	21.	Camera	कैमरा
9.	Bus	बस	22.	Chair	कुर्सी
10.	Bat	बल्ला	23.	Car	कार
11.	Pressure Cooker	प्रैशर कुकर	24.	Cup-Plate	कप-प्लेट
12.	Book	किताब	25.	Almirah	अलमारी
13.	Kite	पतंग			

**(B) Symbol to be allotted to candidates for Vice-President:**

Sr. No.	Name of Symbols		Sr. No.	Name of Symbols	
1.	Star	सितारा	13.	Black Board	श्यामपट
2.	Rising Sun	चढता सूरज	14.	Globe	ग्लोब
3.	Moon	चाँद	15.	Water Melon	तरबूज
4.	Radio	रेडियो	16.	Mango	आम
5.	Jeep	जीप	17.	Baby Doll	गुड़िया
6.	Balloon	गुब्बारा	18.	Umbrella	छाता
7.	Hockey & Ball	हाकी और गेंद	19.	Tractor	ट्रैक्टर
8.	Ladder	सीढ़ी	20.	Wheel Barrow	ठेलागाड़ी
9.	Drum	नगाड़ा	21.	Dancing Girl	नाचती लड़की
10.	Spade	फावड़ा	22.	Tabla (Two)	दो तबले
11.	Candle	मोमबती	23.	Electric Bulb	बिजली का बल्ब
12.	Axe	कुल्हाड़ी	24.	Hurricane Lamp	लालटेन
			25.	Violin	सारंगी

**(C) Symbol to be allotted to candidates for President:**

Sr. No.	Name of Symbols		Sr. No.	Name of Symbols	
1.	Flower	फूल	13.	Soldier	सिपाही
2.	Fort	किला	14.	Table Fan	मेज का पंखा
3.	Harmonium	हारमोनियम	15.	Whistle	सीटी
4.	Table Lamp	टेबल लैम्प	16.	Box	सन्दूक
5.	Bow & Arrow	धनुष बाण	17.	Ring	अंगूठी
6.	Dholak	ढोलक	18.	Scissors	कैंची
7.	Banana	केला	19.	Comb	कंघी
8.	Bucket	बाल्टी	20.	Carrot	गाजर
9.	Coconut Tree	नारियल का पेड़	21.	Wrist Watch	हाथ की घड़ी
10.	Pencil	पेंसिल	22.	Jug	जग

11. Sword	तलवार	23. Truck	ट्रक
12. Motorcycle	मोटर साईकल	24. Diesel Pump	डीजल पम्प
		25. Coconut	नारियल

This is in supercession of earlier notification No. SEC-13-78/2002-1592-1615 dated 8th, Oct, 2002.

By order,  
DEV SWARUP,  
State Election Commissioner.

## LABOUR AND EMPLOYMENT

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL,  
DHARAMSHALA, H.P.

Ref No. : 175/2006  
Date of Institution : 4.12.2006  
Date of decision : 28.2.2009

Shri Angat Kumar S/o Shri Gauri Dutt Village Bari, P.O. Khurahal, Tehsil Sunder Nagar, District Mandi, H.P.

....Petitioner

Versus

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. L.B. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Angat Kumar S/o Shri Gauri Ram workman by the Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P. w.e.f. October, 2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in Kangoo Range of Sundernagar Forest Division in June, 1999 and worked as such upto November, 2003. Alleging the respondent to have suddenly terminated his services orally, the petitioner further averred that he was not allowed to work for 240 days in any year, even though he had completed 240 days in „each calendar year.. The respondent, according to the petitioner, had given artificial breaks in his service and retained certain workmen, who were junior to him, at the time his services were dispensed with. The petitioner, it is further averred, requested the respondent to re-engage him, but without effect. Left with no option, he later raised an industrial dispute, which is encompassed in the reference in question. He prays for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prays for the grant of full back-wages and other consequential service benefits including continuity of service.

3. The respondent in his reply denied the petitioner.s claim of having been engaged as daily waged Beldar in June, 1999. It is averred that the petitioner was engaged as daily waged Beldar in Kangoo Range of Sundernagar Forest Division in January, 2000, and that he had completed more than 240 days till October, 2003. The petitioner, it is further averred, had worked only for 8 days in 2004 and 5 days in 2005, and did not turn up in 2006 and 2007. By a letter dated July 25, 2004, which was served upon the petitioner on July 27, 2004 through a Beldar namely Ashwani Kumar, he (petitioner) was called upon to join his work, but he intentionally „avoided to join his work.. Refuting the

petitioner.s allegation of fictional breaks, the respondent averred that he (petitioner) had not turned up to join his work „at his own sweet will. and thus lost his seniority as daily waged worker. The petitioner.s allegation that certain workers junior to him were retained in service, was also refuted by the respondent. On the basis of these averments the respondent prayed for dismissal of the reference.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? OPP
2. Whether the petition is not maintainable. OPR
3. Whether the petitioner has no locus standi to file the present petition. OPR
4. Whether the petitioner has no cause of action against the respondent. OPR
5. Whether there is no violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947. OPR
6. Relief. OPR

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes, he is entitled to reinstatement and continuity of service from the date his retrenchment. |
| Issue 2 : | No   |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Issue 6 : | The petition allowed partly per operative part of the award.                                   |

#### REASONS FOR FINDINGS

##### *Issues 1 And 5*

7. These issues being inter-linked are taken up together.

8. The petitioner.s claim of having been engaged by the respondent as daily waged Beldar in June, 1999 does not appear to be having a ring of truth in view of the documentary evidence led by the respondent. The mandays chart Ex. RW1/B the correctness of which is not disputed by the petitioner, is indicative of the latter having been engaged by the respondent as daily waged Beldar in January, 2000. The respondent.s claim that the petitioner was engaged as daily waged Beldar in January, 2000, therefore deserves acceptance and is accepted.

9. The petitioner.s services are alleged to have been terminated by the respondent orally in October, 2000. This allegation, to my thinking, appears to be true in view of the mandays chart Ex. RW1/B, which is indicative of the petitioner having worked upto the month of October, 2003. The Ld. Dy. District Attorney appearing for the respondent contends with vehemence that the petitioner, who was a casual worker, had abandoned the job on his own in October, 2003, and that in view of this position, no provision of the Industrial Disputes Act, 1947 (the Act, for short) can be said to have been violated. I am not impressed with this contention. Nowhere in his pleadings did the respondent aver that the petitioner had abandoned the job on his own in October, 2003. Rather what is inter alia averred in the respondent.s reply to the petitioner.s statement of claim is:

**“.....In fact, the applicant was engaged w.e.f. January, 2000 as per record maintained by the respondents and he completed more than 240 days till October, 2003, but the applicant only worked for 8 days during the year 2004 and for 5 days during the year 2005 and during the year 2006 & 2007, the applicant never turned up on work at his own volition. ....From the Mandays chart attached herewith as Annexure-I, it is evident that the applicant was on work during the year 2004, but he worked only for 8 days in the month of July, 2004 and thereafter he did not turn up. Similarly in February, 2005, he worked for 5 days only and then did not turn-up on work. During the years 2006 and 2007, the applicant never visited the office of the Range Officer, Kangoo Range at Kangoo.....”**

10. The respondent to establish his claim that the petitioner had abandoned the job on his own ought to have adduced in evidence the muster roll for the month of October, 2003 wherein the latter may have been shown to have absented from work. But the respondent having failed so to do, it is difficult to accept his claim that the petitioner had abandoned the job. In view of the mandays chart aforementioned and the respondent's averments that the petitioner was engaged as daily waged Beldar in January, 2000 and completed more than 240 days till October, 2003, I have not hesitation in holding that the services of the petitioner were terminated by the respondent in October, 2003.

11. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;

(b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

12. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case;

(b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) ninety-five days, in the case of workman employed below ground in a mine; and

(ii) one hundred and twenty days, in any other case....”

13. The mandays chart Ex. RW1/B as also the respondent's pleadings are demonstrative of the petitioner having worked for more than 240 days during the period of 12 calendar months preceding the date of his removal from service. There is nothing to suggest that the respondent had at the time of termination of the services of the petitioner given him one month's notice or paid him wages in lieu of such notice, along with retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner's removal from service thus being violative of the said provisions was not proper and justified.

14. In dispensing with the services of the petitioner, the respondent also appears to have violated the provisions of Section 25-G of the Act, which provides:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

15. The daily waged workers whose names figure at serial nos. 83, 84, 85, 86, 87, 89, 90, 91, 92, 93, 95, 96, 98, 99, 101, 102 and 104 in the seniority list Ex. RW1/D adduced in evidence by the respondent, are indubitably junior to the petitioner. This document is indicative of these workmen having been retained in service at the time the services of the petitioner were dispensed with in October, 2003. In terminating the services of the petitioner, the respondent can therefore safely be held to have violated the abovementioned provisions of Section 25-G of the Act as well. The petitioner is therefore entitled to reinstatement in the same capacity as in which he was working at the time his services were unlawfully terminated by the respondent. Besides, he is entitled to continuity of service from the date of his retrenchment (October, 2003). In view of the facts and circumstances of the case, he is held entitled to 50% back-wages as well. Both the issues under discussion are accordingly held in his favour and against the respondent.

#### *Issue 2*

16. In view of what has been held under the above issues 1 and 5, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is held accordingly in favour of the petitioner and against the respondent.

#### *Issue 3*

17. In view of what has been held under the above issues 1 and 5, the petitioner has decidedly locus standi to raise the industrial dispute encompassed in the reference in question. The issue on hand is therefore held in his favour and against the respondent.

#### *Issue 4*

18. In view of my findings on the above issues 1 and 5, the respondent's claim that the petitioner has no cause of action, does not hold water and is therefore rejected. The issue under discussion is therefore held in favour of the petitioner and against the respondent.

### RELIEF

19. Judged in the light of my findings on the issues above, particularly issues 1 and 5, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (October, 2003). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref. No. : 367/2002  
Date of Institution : 25.11.2002  
Date of decision : 17.1.2009

Ms. Anita Devi D/o Sh. Jagdish Chand, Village, Dak Bagra, P.O. Chountra, Tehsil, Joginder Nagar, Distt. Mandi, H.P.

...Petitioner

Versus

The Executive Engineer, H.P.S.E.B. Division Joginder Nagar, Distt. Mandi, H.P.

.....Respondent

For the Petitioner : Sh. Virender Sharma, Adv.

For the Respondent : Sh. B.K. Sood, Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of the services of Ms. Anita Devi (Daily Waged Meter Reader/ Bill Distributor) D/o Sh. Jagdish Chand w.e.f. 25.7.1986 by the Executive Engineer, H.P.S.E.B Division Joginder Nagar, Distt. Mandi without any notice, Charge Sheet and enquiry is proper and justified? If not, what relief of service benefits the above workman is entitled to?”***

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Meter Reader/Bill Distributor on muster roll basis on August 25, 1980, and that she worked as such under the Assistant Engineer, Electrical Sub Division Chountra upto July 24, 1986. Claiming to have worked for 1744 days during the period she remained in the employ of the respondent, the petitioner alleged that the respondent struck out her name from the muster roll w.e.f. July 25, 1998, vide his letter No.JED/A-10/86-87-8305 dated 21.10.1986. Claiming to have completed more than 240 days during the period of 12 calendar months preceding the date of termination of her services, the petitioner further alleged that in dispensing with her services, the respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short), for she was not served with any notice nor was she paid retrenchment compensation at the time her services were dispensed with. Besides, the respondent, according to her, violated the principle of „last come first go. as envisaged under Section 25-G of the Act, because certain workmen namely Kiran Sharma, Virender Kumar, Sapna Dhawan and Kuldeep Chand, who were junior to her, were retained in service at the time of termination of her services. These workmen, it is further averred, were later regularised as clerk. In dispensing with the services of the petitioner, the respondent also violated the provisions of Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946. Besides, he committed breach of the provisions of Section 25-H of the Act, according to the petitioner. On the basis of these averments the petitioner prayed for a direction to the respondent to reinstate her with full back-wages and continuity of service. She also prayed for a direction to the respondent to fix her seniority as Clerk/Meter Reader/Bill Distributor in the regular pay scale.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as Bill Distributor on daily wages basis on August 25, 1980, but refuted her allegation that her services were terminated on July 25, 1986. Denying having terminated the services of the petitioner, the respondent averred that she had worked upto August 18, 1986 and abandoned the job on her own on August 19, 1986 without giving any prior intimation to her superiors. As the petitioner did not turn up after August 18, 1986, the Assistant Executive Engineer, Electrical Sub Division, HPSEB, Chountra, informed the Executive Engineer, Electrical Division, Joginder Nagar of her absence and sought guidance in the matter, vide letter No.957-58 dated August 30, 1986. In response to the letter, the said Executive Engineer intimated that the name of the petitioner had been struck out from the Seniority Register in the Divisional office on account of her absence from duty from August 19, 1986 onwards. After abandoning the job on August 19, 1986, the petitioner, according to the respondent, never approached him for her re-engagement during the period of more than 15 years of her continuous absence from duty. In view of her having abandoned the job on her own, no provision of the Act or the Standing Orders, according to the respondent, can be said to have been violated. The respondent.s other contentions relate to limitation, estoppel, misjoinder of the parties and non-joinder of necessary parties.

4. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition. According to her, she was forced to leave the job by the official of the Sub Division, and that she had approached the respondent “through many correspondences and the respondent did not pay any heed towards the letter of the workman.”

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the termination of services of the petitioner Anita Devi w.e.f.25.7.86 by the respondent is legal and justified?

OPP

2. If Issue No.1 is not proved, what relief of service benefits the petitioner is entitled to? OPP
3. Whether the petition is not maintainable as alleged? OPR
4. Whether the present petition is barred by time as alleged? OPR
5. Whether the petitioner is estopped to file and maintain the present petition in view of the preliminary objections? OPR
6. Whether the petition is bad for misjoinder and nonjoinder of necessary parties, as alleged? OPR
7. Relief. OPR

6. By his award dated March 3, 2006, my Ld. Predecessor-in-office dismissed the petitioner's claim, inter alia observing:

**“.....Bearing in mind the above discussions hinged upon the verdict of the Hon.ble High Court of H.P. holding that the belated preferment of claim imbues it with staleness, so, as to render the reference comprising the dispute to be, also, stale, thereby rendering the reference as not maintainable and while keeping in mind the delay and laches as have taken place, since, the retrenchment of the workmen which in took place in the year 1986, the reference as has been made of the dispute by the competent authority in the year 2001 is manifestly and palpably belated, especially, when of no explanation on proof of delay thereof exists, hence stale, therefore, on account of staleness of the claim, the claim, as, preferred before this Tribunal, in my view is not maintainable being barred by delay and laches. Since the staleness of claim has been held to be not keeping the dispute alive, therefore, the conclusion is that the workman has acquiesced in it or a dispute as it then was and which ought to have been expeditiously canvassed by the workman on account of delay can be said to have been effaced or faded, so, also, the concomitant effect is that inference of abandonment can also be made....”**

7. Aggrieved, the petitioner preferred before the Hon.ble High Court of Himachal Pradesh a Writ Petition (CWP No.474/2007). By its order dated November 27, 2008, the Hon.ble High Court set aside the impugned award and remanded the matter to this Court for decision afresh, inter alia observing:

**“.....The Labour Court has rejected the claim petition only on the ground of delay and laches. The question of delay and laches was never referred to the Labour Court. In the present case neither the petitioner nor the employer has placed on record any material to show when the conciliation proceedings commenced and failed. The raising of demand notice, conciliation proceedings and failure report etc. consumes considerable time. The date of raising the dispute is not the date of the reference by the State Government. The dispute is raised when the workman protests against the action taken by the Management. In the present case, the workman has been retrenched on 25.7.1986. She has made representation Ex. P4 in the year 1986. She made representations to the Executive Engineer in the year 1989 (Ex. P-3) and August, 1989 (Ex. P-2). The representations made by the workman were not heeded to. The workman has issued the demand notice 9th June, 2001 (Ex. P-5). Thereafter considerable period has been consumed during the conciliation proceedings. Consequently, it cannot be held that there is delay of 16 years in the present case.**

The Labour Court could not refuse to exercise the jurisdiction vested in it on the ground of delay and laches when the reference has already been made by the State Government in its own wisdom.

The Labour Court instead of dismissing the claim on the ground of delay could take this fact into consideration at the time of moulding of the relief. Accordingly, the award dated 23.3.2006 passed by the Presiding Judge, Labour Court, Dharamshala is quashed and set aside....”

8. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |   |
|-----------|---|
| Issue 1 : | The petitioner having been proved to have abandoned the job on her own, hers was not a case of termination of her services. |
| Issue 2 : | She is not entitled to any relief.  |
| Issue 3 : | Yes   |
| Issue 4 : | The petition suffers from the vice of delay and laches.   |
| Issue 5 : | Yes   |
| Issue 6 : | No  |
| Issue 7 : | The petition dismissed per operative part of the award.   |



## REASONS FOR FINDINGS

*Issue 1*

9. The petitioner's claim of having worked as daily wage Meter Reader/Bill Distributor under the Assistant Engineer, Electrical Sub Division, Chountra upto July 24, 1986 and her allegation that her services were suddenly terminated by the respondent on July 25, 1986, do not appear to be having a ring of truth in view of the materials on record. The mandays chart Ex. RW1/A the correctness of which is not disputed by her, is indicative of her having worked for 24 days during the period from July 25, 1986 to August 24, 1986. Had her services been terminated by the respondent on July 25, 1986 as alleged by her, she would have not been shown to have worked beyond July 24, 1986 in the mandays chart. Her claim that her services were terminated by the respondent on July 25, 1986, is therefore nothing but falsity. More so, when she in her cross-examination as PW1 maintained:

**“.....My date of suspension of service mentioned in the petition as 25.7.85 is wrong and incorrect; self stated that it is a clerical mistake....”**

10. But nowhere in her pleadings did the petitioner allege that her services were terminated by the respondent on August 25, 1986. She in her statement of claim mentioned two dates of the alleged termination of her services; one, 25.07.1985 in paragraph 2, and the other, 25.07.1986 in the relief portion.

11. Refuting the petitioner's allegation of termination of her services, the respondent, on the other hand, averred that the petitioner, who was engaged as Bill Distributor on daily wages basis on August 25, 1980, had worked upto August 18, 1986, and that she abandoned the job on her own on August 19, 1986 without giving prior intimation to her superiors, appears to be true in view of the evidence led by the respondent. The respondent's witness B.R. Rana, then Assistant Executive Engineer, Electrical Division, HPSEB, Joginder Nagar, testified as RW1 that petitioner Anita was not removed from service but she herself absented from work. Ex. RW1/C is a copy of the letter dated August 30, 1986 addressed to the Executive Engineer, Electrical Division, Joginder Nagar, by the Assistant Engineer, Electrical Division, HPSEB, Chountra. The letter, which was about the petitioner's absence from duty without intimation, in its material part reads:

**“It is intimate that Smt. Anita Devi W/o Sh. Jagjit Singh working under this Sub-Division as M/Roll basis as Bill Distributor Helper is absent from duty w.e.f. 18.8.1986 to date. She has neither submitted any application for leave in this office nor she has verbally taken permission from any body regarding her absence from duty. There is a continuous absence of 11 days w.e.f. 18.8.86 to date and it is not known as to when she will turn up for duty.**

It may, therefore, kindly be advised whether Smt. Anita Devi W/o Sh. Jagjit Singh daily wages B.D. helper is to be re- engaged as her joining please.”

12. In response to this letter, the Executive Engineer aforementioned sent to the Assistant Executive Engineer a letter dated October 21, 1986, a copy whereof which is Ex. PW1/D. The relevant portion of this letter reads:

**“In this connection it is intimated that the name of Smt. Anita Devi W/o Sh. Jagjit Singh working under your Sub-Division on M/Roll basis as B/D helper has been struck off from the seniority Register of Divisional Office, because of her absence from duty from 18.8.86 onwards.”**

13. There being no reason to discredit the correctness of this letter and the one dated August 30, 1986, Ex. RW1/C, the respondent's claim that the petitioner had abandoned the job after August 18, 1986, rings true. More so, in view of the petitioner's failure to approach the respondent or raise the industrial dispute for years together after August 18, 1986, and the falsity of her following averments in paragraph 2-B of the rejoinder:

**“.....the applicant/workman did not leave the job at her own but she has been forced to leave the job by the Deptt. and it is also denied that the applicant/workman did not approach the respondent for the re-engagement. The applicant/workman approached the respondent through many correspondence and the respondents did not pay any heed towards the letter of the applicant/workman.....”**

14. The petitioner sought to substantiate these averments by adducing in evidence photocopies of three letters (Ex. P2, Ex. P3 and Ex. P4) she claimed to have written to the Executive Engineer, HPSEB, Joginder Nagar and the SDO, HPSEB, Chountra. Of these letters, while the one Ex. P4 addressed to the SDO, HPSEB, Chountra bears only the year „1986. in the place of date and is non-existent in the date and month when the same was written, the other Ex. P2 addressed to the Executive Engineer, HPSEB, Joginder Nagar shows the same to have been written in „August 1999. and is non-existent in the date. The third letter Ex. P3 addressed to the Executive Engineer, HPSEB, Joginder Nagar bears the date 24 Mar 1985.. What prevented the petitioner from writing the exact date in the letters Ex. P2 and

Ex. P4, is inexplicable. It deserves mention that she did not choose to get the originals of these letters requisitioned from the respondent nor did she choose to put them to the respondent.s aforesaid witness B.R. Rana during his cross-examination as RW1. To me, the said letters do not appear to be genuine, else the petitioner would have written the exact date thereon, made a mention thereof in her pleadings, got the originals thereof requisitioned from the respondent or atleast put them to the respondent.s aforesaid witness B.R. Rana during his cross-examination as RW1. In view of the falsity of the petitioner.s claim of having entered into correspondence with the respondent for her re-engagement in service, I am disposed to hold that she did not approach the respondent for years together after August 18, 1986. This conduct of hers and the raising of the instant industrial dispute by her more than a decade after July 24, 1986 lead me to hold that her allegation that her services were terminated by the respondent on 24.07.1986/25.07.1986/25.08.1986 (the first two dates are in her statement of claim and the last one is in her affidavit Ex. P1) is nothing but falsity. More so, in view of the evidence led by the respondent, which is demonstrative of her having abandoned the job on her own on August 19, 1986. The issue under discussion is accordingly held against her and in favour of the respondent.

#### *Issue 2*

15. In view of what has been held under the foregoing issue the petitioner is not entitled to any relief. The issue on hand is held accordingly.

#### *Issue 3*

16. In view of my findings on the above issue 1, the petition is not maintainable. The issue on hand is therefore held in favour of the respondent and against the petitioner.

#### *Issue 4*

17. The petitioner is proved to have abandoned the job on her own on August 19, 1986. The instant reference made to this Court vide HP Government (Labour Department) Notification No.11-23/84(लैब) आई डी/भाग/2002/Mandi dated November 23, 2002, appears to have been based on the report dated October 20, 2001 of the Labour Inspector-cum-Conciliation Officer, Joginder Nagar. Even if a period of about 5 years is assumed to have been consumed in conciliation proceedings, the petitioner must have approached the said Labour Inspector in or about 1995, that is, about ten years after July 24, 1986. In view of this position and what has been held under the above issue 1, the petition decidedly suffers from the vice of delay and laches. The issue under discussion is accordingly held against the petitioner and in favour of the respondent.

#### *Issue 5*

18. The petitioner, who is held to have abandoned the job on her own, is estopped from raising the industrial dispute. Her petition is therefore not maintainable. The issue on hand is held accordingly.

#### *Issue 6*

19. The instant is not a case of mis-joinder of the parties. Also no such party appears to have been left out as in the absence of whom the matters in controversy cannot be effectively adjudicated upon. The respondent.s contention that the petition is bad for mis-joinder of the parties and non-joinder of necessary parties, is therefore not tenable. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

### RELIEF

20. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition fails and is hereby dismissed.

There shall be no order as to costs. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 17th day of January, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 3/2008

Date of Institution : 17.1.2008

Date of decision : 26.11.2008

Shri Bahadur Singh S/o Shri Rania Ram, R/o Village Jaskot, P.O. Jhanyari, Tehsil & District Hamirpur, H.P.

....Petitioner

*Versus*

1. Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P.
2. The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P.

.....Respondents

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the action of the (1) Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. (2) The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. to retain junior workers who are junior to Shri Bahadur Singh S/o Shri Rania Ram workman and to give him break in service as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged beldar by the respondent 1 on January 4, 1999 and posted to Herbal Garden, Neri in Hamirpur district. Claiming to have been working at the said place ever since his engagement as daily waged beldar, the petitioner alleged that the respondents 1 and 2 had been giving fictional breaks in his service so that he could not be able to complete 240 days in any of the calendar years. His co-workmen namely Pawan Kumar, Jasbir Singh, Ravinder Kumar, Desh Raj, Chaman Lal, Vijay Kumar, Ramesh Chand and Milap Chand, who were also working at Herbal Garden, Neri as daily waged beldar, were also given fictional breaks except one Satish Kumar, who was also engaged as daily wagger by the respondent 1 and working in the said garden. In the case of Satish Kumar, no fictional break, according to the petitioner, was ever given and the respondents. act of giving fictional breaks in the petitioner.s service and that of his aforementioned co-workers is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act, for short). Some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who according to the petitioner were also engaged on daily wages basis in another herbal garden of Ayurveda department namely Herbal Garden, Joginder Nagar in Mandi district, were also being given fictional breaks in their service. In their case, the Incharge, Herbal Garden, Joginder Nagar, was, however, forbidden from giving fictional breaks by the Director of Ayurveda, vide his letter dated July 18, 1999. Claiming the fictional breaks in his case to be the intentional act of the respondents, the petitioner further averred that he having never absented from work wilfully was entitled to continuity of service in view of the provisions of Section 25-B of the Act. Besides, he is entitled to wages for the period of fictional breaks. He therefore prays for a direction to the respondents to count the period of fictional breaks towards continuity of his service and pay him wages for the said period along with interest @ 9% per annum. He also prays for a direction to the respondents to regularise his service on the basis of his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged beldar at Herbal Garden, Neri on January 4, 1999, but refuted his allegation of fictional breaks. Claiming the work of Herbal Garden, Neri to be a seasonal work, the respondents averred that the petitioner and other workers namely Chaman Lal, Vijay Kumar, Ramesh Chand, Baljit Singh, Pawan Kumar, Jasbir Singh, Desh Raj, Ravinder Kumar, Chander Kant, Ravinder Kumar and Madan Lal were engaged on daily wages basis at the said garden subject to availability of work and budget, and no fictional break was ever given in their service. As for Satish Kumar, he was in fact engaged as daily waged worker at Herbal Garden, Joginder Nagar on 1.7.1996 and he being deft in nursery development work was temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the said work and other related works there. About four years later he was called back to Herbal Garden, Joginder Nagar after the other workers

of Herbal Garden, Neri gained knowledge of nursery development work upto the desired level. On the basis of these averments the respondents pray for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

- |   |     |
|---|-----|
| 1. Whether the respondents have been giving fictional breaks in the service of the petitioner.            | OPP |
| 2. Whether Satish Kumar is junior to the petitioner, as alleged.  | OPP |
| 3. If the above issues 1 and 2 are proved, what relief of service benefits the petitioner is entitled to? | OPR |
| 4. Relief.  |     |

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |   |
|-----------|---|
| Issue 1 : | Yes partly, as the respondents have been giving breaks in the service of the petitioner.  |
| Issue 2 : | No  |
| Issue 3 : | The petitioner is entitled to the relief as mentioned in the operative part of the award. |
| Relief :  | The claim petition allowed partly per operative part of the award.                        |

#### REASONS FOR FINDINGS

##### *Issue 1*

7. The petitioner's claim of having been engaged as daily waged Beldar at Herbal Garden, Neri on January 4, 1999, is not disputed by the respondents. Also, his claim that he was still working as beldar on daily wages basis at the said garden, is not denied by the respondents. What is denied by the respondents is his allegation of fictional breaks. But this denial of theirs appears to be far from truth in view of the materials on record. The Mandays Chart of casual labourers working in Herbal Garden, Neri is demonstrative of the petitioner having worked for 209 days in 1999, 219.5 days in 2000, 209.5 days in 2001, 219 days in 2002, 212.5 days in 2003, 213 days in 2004, 252 days in 2005, 326 days in 2006, 296 days in 2007 and 117 days during the period from January 1, 2008 to April, 2008. That there have been breaks in his service is manifest from this document. In substantiation of his allegation that the breaks in service were notional/fictional, the petitioner swore an affidavit Ex. PW1/A wherein he alleged that the respondents had been giving notional/fictional breaks in his service during the period; January, 1999 to April, 2005. Besides, he relied upon a copy of the letter dated July 18, 1999 addressed to the Incharge, Herbal Garden, Joginder Nagar by the Director of Ayurveda, Himachal Pradesh, Annexure P1. This letter in its material part reads:

**“You are hereby advised not to give any break after 89 days in future to daily paid Labourers who are engaged to work in Herbal Garden as such a notional break has been disapproved by the competent courts also.”**

The petitioner's allegation is that some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were also being given fictional breaks in their service, and that the Incharge of the said Garden was forbidden from so doing by the Director of Ayurveda, vide his aforementioned letter dated July 18, 1999, Annexure P1. As to this allegation, the respondents' averments in paragraph 7 of their joint reply are:

**“That the contents of para-7 are admitted to the extent that these workers Sh. Sohan Singh, Lohli Devi, Ram Singh, Saina Devi, Puni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judhia Devi, Nirmala Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram & Kala Devi were engaged in Herbal Garden, Joginder Nagar and their notional breaks were discontinued by the order of Director Ayurveda, H.P. being senior. The office order issued by the Director Ayurveda to discontinue the breaks is not applicable to the casual labourers working in Herbal Garden Neri because they are being engaged subject to the availability of work & budget, as the work of Herbal Garden Neri is a seasonal work.” (emphasis supplied)**

8. By these averments, what stands admitted by the respondents is that abovenamed workers, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were being given fictional/notional breaks in their

service, which practice was discontinued on receipt of an office order issued by the Director Ayurveda. Why the said Director's office order to discontinue the breaks in service could not be made applicable to the casual labourers working in Herbal Garden, Neri, is averred to be their having been engaged subject to the availability of work and budget, as the work of Herbal Garden, Neri, according to the respondents, is a seasonal work. Going by this claim of the respondents, the petitioner's service, or for that matter the service of the workmen engaged in Herbal Garden, Neri used to be terminated from time to time on account of cessation of work and non-availability of budget. They used to be re-engaged on the availability of work and budget. Although there is no plausible material on record to lend assurance to the respondents' claim that the work of Herbal Garden, Neri is only seasonal, and that the petitioner and his aforementioned co-workers were engaged there as casual workers subject to the availability of work and budget, even if this claim is assumed to be true, the petitioner is entitled to the relief of continuity of service in view of the provisions of Section 25-B of the Act, which in its material part says:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.....”

9. It is manifest from these provisions that a workman is deemed to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. If to go by the respondents' stand, the breaks in the petitioner's service were caused on account of cessation of work and non-availability of funds. But the cessation of work and the non-availability of funds not been attributable to any fault on the part of the petitioner, he is to be considered in continuous service ever since his engagement as beldar on daily wages basis (January 4, 1999). The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

*Issue 2*

10. The petitioner's claim that Satish Kumar having been engaged by the respondents as daily waged beldar in Herbal Garden, Neri on 12.4.1999 was junior to him, to my thinking, does not appear to be having a ring of truth in view of materials on record. The respondents' averments as also the evidence led by them are indicative of Satish Kumar having been engaged as daily waged beldar in Herbal Garden, Joginder Nagar on July 1, 1996 and his having been temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the nursery development work there. According to the respondents, the reason why Satish Kumar was temporarily shifted to Herbal Garden, Neri, was his being deft in nursery development work and the casual workers engaged in Herbal Garden, Neri not being in the know of that work. About four years later, Satish Kumar was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery work upto the desired level. There being no reason to discredit this claim of the respondents, the petitioner's claim that Satish Kumar is junior to him cannot to be accepted and is therefore rejected. The issue on hand is accordingly held against the petitioner and in favour of the respondents.

*Issue 3*

11. In view of the facts and circumstances of the case and my findings on the foregoing issues, the petitioner is entitled to only the relief of continuity of service from the date of his engagement as daily waged beldar (4.1.1999). The issue on hand is held accordingly.

**RELIEF**

12. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to continuity of service from the date of his engagement as daily waged beldar (4.1.1999). He is, however, held not entitled to wages for the periods of break in his service. Also, his claim that certain workers junior to him were retained is rejected. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 91/2005

Date of Institution : 18.6.2005

Date of decision : 20.12.2008

Shri Baldev Dass S/o Shri Sant Ram, Village Dakhyat, P.O. Dangar, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

....Petitioner

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Ghumarwin, Distt. Bilaspur, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Baldev Dass S/o Shri Sant Ram workman by the Executive Engineer, H.P.P.W.D. Division, Ghumarwin, Distt. Bilaspur, H.P. w.e.f. 28.2.98 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained by the department is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on June 1, 1997, and that he worked as such upto February 28, 1998 when his services were terminated by the respondent orally. Claiming to have worked for more than 240 days during each completed year of service, the petitioner further averred that in dispensing with his services, the respondent violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short), because no notice was served upon him nor was he paid any retrenchment compensation. Besides, the respondent violated the principle of „first come last go. as envisaged under Section 25-G of the Act. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act, because the persons namely Raghunath, Jitender Singh, Chain Singh, Om Prakash, Rakesh Kumar, Ramesh Chand, Thakur Dass, Bali Ram, Data Ram, Surender Kumar, Bhagwan Dass, Subhash Chand, Vidhi Chand, Anand Kumar, Sarju Ram and Jaisee Ram, who were engaged after the termination of services of the petitioner and no opportunity to offer himself for employment was given to him by the respondent before engaging them. According to the petitioner, the respondent also violated the provisions of Section 25-N of the Act, because no prior approval of the State Government was sought for termination of his services. The petitioner prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. Admitting the petitioner's claim of having been engaged as daily waged Beldar on June 1, 1997, the respondent averred that he having been engaged only for a period of 100 days under the Employment Assurance Scheme was not covered by the principle of „first come last go.. Disputing the petitioner's claim of having worked for more than 240 days during each completed year of service, the respondent further averred that he had worked for 179 days in 1997 and 55 days in 1998, and that in view his working days, the provisions of Section 25-F of the Act could not therefore be said to have been violated. The petitioner's allegation that certain workmen junior to him were retained in service at the time his services were dispensed with, was also repudiated by the respondent. However, his allegation that the persons namely Raghunath, Jitender Singh, Chain Singh, Om Prakash, Rakesh Kumar, Ramesh Chand, Thakur Dass, Bali Ram, Data Ram, Surender Kumar, Bhagwan Dass, Subhash Chand, Vidhi Chand, Anand Kumar, Sarju Ram and Jaisee Ram were engaged after the termination of his services, was admitted to be correct by the respondent. It is further averred that these persons were engaged on the basis of the orders of the H.P. Administrative Tribunal. On the basis of these averments, the respondent prayed for dismissal of the claim petition.

4. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 28.2.98 without complying with the provisions of the Industrial Disputes Act, is an improper and unjustified manner?

OPP

2. If issue 1 is not proved in the affirmative, what service benefits the petitioner is entitled to? OPP
3. Whether the petitioner was engaged by the respondent under the Employment Assurance Scheme for which the funds were provided by the Central Govt. to the respondent. If so, its effect? OPR
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes
- Issue 2 : He is entitled to reinstatement, 25% back-wages and continuity of service from the date of termination of his services.
- Issue 3 : No
- Issue 4 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1 And 3*

6. These issues being inter-linked are taken up together.

7. The respondent in his reply averred that the petitioner was engaged as daily waged Beldar only for 100 days under the Employment Assurance Scheme. But this claim, to my mind, does not ring true in view of the mandays chart (Annexure R1), which is demonstrative of the petitioner having worked for 179 days in 1997 and 55 days in 1998. Had the respondent's claim of having engaged the petitioner only for 100 days under the scheme aforementioned been true, the latter would have not been allowed to work after the expiration of the period of time for which he was allegedly engaged. I am therefore not disposed to accept the respondent's claim that the petitioner was engaged only for 100 days under the Employment Assurance Scheme.

8. Section 25-F of the Act, which is alleged to have been violated by the respondent, reads:

**“25-F. Conditions precedent to retrenchment of workman.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-**

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(2) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(3) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

10. However, the petitioner.s claim of having been in continuous service for not less than one year or say his claim of having completed 240 days “in each service year”, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart (Annexure R1) the correctness of which is not disputed by the petitioner, is demonstrative of his having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve with him one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner.s contention that in retrenching him the respondent had violated the provisions of Section 25-F of the Act cannot therefore be accepted.

11. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

12. The respondent.s witness Lekh Ram Mehla, then Executive Engineer, HPPWD Division Ghumarwin, in paragraph 5 of his affidavit Ex. RW1/A deposed:

**“That the other labourers who are junior to the petitioner are working in the department, as per order of Administrative Tribunal Shimla, H.P.”**

13. This deposition is indicative of certain workmen junior to the petitioner having been retained in service. No such orders of the H.P. Administrative Tribunal have been brought on record as may lend assurance to the respondent.s claim that the workmen junior to the petitioner were working in the department on the basis thereof. As the respondent on his own showing established on record that certain workmen junior to the petitioner were retained in service at the time the latter.s services were dispensed with, he (respondent) can safely be held to have violated the provisions of Section 25-G of the Act. But the respondent also appears to have violated the provisions of Section 25-H of the Act, which says:

**“25 (H). Re-employment of retrenched workman.** – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons”.

14. In paragraph 2 of his statement of claim, the petitioner averred:

**“That the employer, after my termination, following new worker appointed who are still in service, Raghunath, Jitender Singh, Chain Singh, Om Prakash, Rakesh Kumar, Ramesh Chand, Thakur Dass, Bali Ram, Data Ram, Surender Kumar, Bhagwan Dass, Subhash Chand, Vidhi Chand, Anand Kumar, Sarju Ram and Jaisee Ram.”**

15. Admitting these averments to be correct, the respondent in his reply averred:

**“That the labourer as: Raghu Nath, Jitender Singh, Chain Singh, Om Prakash, Rakesh Kumar, Ramesh Chand, Thakur Dass, Bali Ram, Data Ram, Surinder Kumar, Bhagwan Dass, Vidhi Chand, Anand Kumar, Sarju Ram and Jaisee Ram are still working in the deptt. But it is pertinent to note here that all these labourer are working as per the order of the Hon.ble Administrative Tribunal at Shimla, H.P.”**

16. In substantiation of these averments, the respondent, however, did not choose to bring on record such orders of the H.P. Administrative Tribunal as may show that the abovementioned workmen were engaged on the basis thereof. Since the persons mentioned in the afore-reproduced paragraph 2 of the petitioner.s statement of claim were admittedly engaged after the termination of his services and there is nothing indicative of the respondent having given the petitioner an opportunity to offer himself for re-employment before taking the said persons into his employ, he decidedly violated the provisions of Section 25-H of the Act. As a result, both the issues under discussion are held in favour of the petitioner and against the respondent.



Issue 2

17. In view of what has been held under the foregoing issues, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is entitled to continuity of service from the date of his retrenchment (February 28, 1998). In view of the facts and circumstances of the case, he is held entitled to 25% back-wages from the date of termination of his services. The issue on hand is held accordingly.

## RELIEF

18. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. (February 28, 1998). Besides, he is held entitled to 25% back-wages and continuity of service from the said date. The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette. The file after completion be consigned to the record room.

Announced in the open Court today this 20th day of December, 2008.

By order,  
S.S. SEN  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 632/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Bansi Lal S/o Shri Mahajan R/o Village Kapahi P.O. Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Bansi Lal S/o Shri Mahajan, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the

Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.

Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

*Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, - but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.**

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State

Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of

any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No. 95/2000 decided on 26.8.2004) wherein it was inter alia held:

**“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9898 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 29, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref No. : 157/2006

Date of Institution : 2.11.2006

Date of decision : 21.1.2009

Smt. Bimla Devi W/o late Shri Darshan Ram Village Halel, P.O. Kanaid, Tehsil Sunder Nagar, District Mandi, H.P.

. .Petitioner.

*Versus*

1. The Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P.
2. The Technical Officer (Tassar) Sericulture Division, Mandi, H.P.

. .Respondents.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. L.B. Sharma, Adv.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

“Whether the action of the (1) Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P. (2) The Technical Officer (Tassar) Sericulture Division, Mandi, H.P. to give break in service to Smt. Bimla Devi W/o Late Sh. Darshan Ram, workman during her service period time and again and finally terminated w.e.f. 09.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondents as daily waged Beldar in 1994, and that she worked as such upto July 20, 2004. Thereafter the respondents suddenly terminated her services orally without giving her an opportunity of being heard. Claiming to have worked for 240 days in each calendar year, the petitioner alleged that the respondents, who had been giving fictional breaks in her service, never allowed her to complete 240 days in any calendar year, and that she having not been served with any notice before termination of her services, the respondent had violated the provisions of Section 25-F of the Act, 1947 (the Act, for short). The respondents, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to her, were retained in service at the time of her retrenchment. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act. The petitioner therefore prayed for a direction to the respondents to re-engage her in the same capacity as in which she was working at the time of termination of her services. She also prayed for a direction to the respondents to pay her full back-wages and count the “intervening period between re-engagement and dis-engagement” towards her seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged Beldar in 1994, but refuted her allegation of fictional breaks in her service. The petitioner.s allegation that her services were terminated on July 20, 2004, was also repudiated by the respondents. Claiming the petitioner to have been engaged as against a seasonal work, which was purely of temporary nature, the respondents averred that she had worked only for 9 days in 1994 and thereafter never completed 240 days in any year, and that she did not turn up after July, 2004. Refuting the petitioner.s allegation that certain workers junior to her were retained and working in the department, the respondents averred that “no junior persons to the applicant has ever been engaged or allowed to be continued by the respondents, as alleged rather all those who are working in the unit are seniors to the applicant.” On the basis of these averments, the respondents prayed for dismissal of the claim petition.

4. The petitioner in her rejoinder controverted the contentions of the respondents and reiterated her stand taken in the claim petition. Claiming to have worked for 9 days in 1994, she alleged that the Mandays Chart prepared by the respondents was wrong, and the certain workers junior to her were still working in the respondents. department.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondent had been giving fictional breaks in the petitioner.s service. If so, to what effect?

. .OPP



2. Whether the termination of services of the petitioner by the respondents is unlawful. If so, what relief of service benefits and the amount of compensation she is entitled to? . . .OPP
3. Whether the claim petition is not maintainable? . . .OPR
4. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No  
 Issue 2 : Yes. She is entitled to the relief as mentioned under this issue.  
 Issue 3 : No  
 Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. The respondents. claim in their joint reply that the petitioner was engaged as against a seasonal work, which was purely of a temporary nature, to my thinking, does not appear to be having a ring of truth in view of the materials on record. Nowhere in his affidavit Ex. RW1/A or cross-examination as RW1 did the respondents. witness Piar Singh, Technical Officer (Tassar) Sericulture Department, Mandi, maintain that the petitioner was engaged as against a seasonal work. Also, the Mandays Chart (Annexure R-1) produced by the respondents is not indicative of the petitioner having been engaged as against a seasonal work. The respondents. claim that the petitioner was engaged as against a seasonal work cannot therefore be taken without a pinch of salt.

7. But the petitioner.s allegation that the respondents had been giving fictional breaks in her service, also, to my mind, does not ring true for want of plausible evidence. She in her affidavit Ex. PW1/A inter alia deposed: "Moreover the respondent No.3 willfully and intentionally did not allow the applicant to complete 240 days initially upto 1997 after that applicant has completed 240 days, but the mandays chart has been prepared arbitrarily as no month wise mandays chart has been given as applicant has worked for whole of the year so the termination order is void, abinitio....."

8. This deposition, to my mind, appears to be far from truth, for the mandays chart is indicative of her having worked for 9, 8, 159, 155, 190, 168, 181, 168, 161 and 65 days during the years 1994, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively.

9. The petitioner.s allegation that the mandays chart has been prepared arbitrarily, and that the respondent 3 (respondent 2 in the reference) had not allowed her to complete 240 days in any calendar year, cannot be accepted, because no such suggestion was put to the latter during his cross-examination RW1 as may show that he had prepared the mandays chart arbitrarily and not allowed the petitioner to complete 240 days in any calendar year. The allegation of fictional breaks cannot therefore be said to have been substantiated. The issue under discussion is accordingly held in the negative.

##### ISSUE 2

10. The petitioner in her affidavit Ex. PW1/A deposed that she had worked upto July 20, 2004 when all of a sudden her services were orally terminated by the respondents. This deposition of hers having not specifically been challenged during her cross-examination by the respondents deserves acceptance and is accepted. The respondents. claim in their joint reply that the petitioner had abandoned the job after July, 2004, is therefore nothing but falsity. More so, when they did not choose to lead such documentary evidence as may show her to have absented from work or abandoned the job after July 20, 2004.

11. The petitioner.s allegation that in terminating her services, the respondents had violated the provisions of Section 25-F of the Act, to my mind, does not appear to be tenable, because the materials on record are not demonstrative of her having worked for 240 days during the period of 12 calendar months preceding the date of her retrenchment.

12. However, in terminating the services of the petitioner, the respondents appear to have violated the provisions of Section 25-G of the Act, which reads:

**"25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily

retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

13. The petitioner in her affidavit Ex. PW1/A deposed that the workmen namely Goverdhan Singh, Bimla Devi, Uttam Chand, Mahant Ram, Nilima, Hans Raj and Rattan, who were junior to her, were still working at Pandoh, Nagwain, Mumail, Mohin and Mandi. This claim of the petitioner having not specifically been disputed during her cross-examination by the respondents appears to be true. More so, when the seniority list Ex. RA adduced in evidence by the respondents is also indicative of the said workmen being junior to the petitioner and their having been retained in service at the time of termination of her services. The respondents are therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. In view of the respondents having been found to have violated the provisions of Section 25-G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time of termination of her services. Besides, she is entitled to continuity of service from the date of her unlawful retrenchment (July 20, 2004). However, she is held not entitled to back-wages, because her pleadings as also the evidence led by her are non-existent in such averments as may show that she was not gainfully employed after her retrenchment. The issue under discussion is held accordingly.

### ISSUE 3

14. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is held accordingly.

### RELIEF

15. Judged in the light of my findings on the issues above, particularly issues 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which she was working at the time of termination of her services (July 20, 2004). Besides, she is held entitled to continuity of service from the date of her retrenchment. She is, however, held not entitled to any back-wages. The respondents are directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2009.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 574/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Biri Datt S/o Shri Dido, Village Jajari, PO Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

*.Petitioner*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*.Respondent*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Biri Datt S/o Shri Dido by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?

. .OPP

2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (iv) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (v) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (vi) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power,

or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject

matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1019/2007-9312, dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 16, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.



## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
(S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 117/2007  
Date of Institution : 12.9.2007  
Date of decision : 2.12.2008

Shri Bishan Dass S/o Shri Kirpa Ram, Village Jamula, P.O. Rajhoon, Tehsil Palampur, District Kangra, H.P.  
..Petitioner

*Versus*

The Director, Indo-German Changer Project, Palampur, District Kangra, H.P.  
..Respondent

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether the termination of services of Shri Bishan Dass S/o Shri Kirpa Ram workman by the Director, Indo-German Changer Project, Palampur, District Kangra, H.P. w.e.f. 01.01.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on September 5, 1993, and that he worked as such upto December 31, 2001. On January 1, 2002, his services were terminated by the respondent. Claiming to have worked for 252 days in 1995, 311 days in 1996, 354 days in 1997, 327 days in 1998, 320 days in 1999, 355 days in 2000 and 344 days in 2001, the petitioner further averred that he having completed 240 days during the period of 12 calendar months preceding the date of his retrenchment could not be removed from service without being served with one month's notice and paid retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). But, the respondent having failed to comply with the said provisions, the termination by him of the services of the petitioner was unlawful. In retrenching the petitioner, it is further averred, not only did the respondent violate the provisions of Section 25-F of the Act but also violated the principle of „last come first go. as envisaged under Section 25-G of the Act, because he retained in service the workmen namely Mangla Devi, Subhash Chand, Kishori Lal, Pritam Singh and Mangal Singh, who were junior to the petitioner, at the time his services were dispensed with. Besides, the respondent also violated the provisions of Section 25-H of the Act by appointing new workers after the termination of the services of the petitioner without giving him an opportunity to offer himself for re-employment. The respondent also committed breach of the provisions of Section 25-N of the Act, because no permission for retrenching the petitioner was obtained from the appropriate Government. The petitioner therefore prayed for a direction to the

respondent to reinstate him with full back-wages and continuity of service. He also prayed for a direction to the respondent to regularise his services "in the status of work charge/regular Beldar on regular pay scale as per policy framed by the State Government."

3. Admitting the petitioner's claim of having been engaged as daily waged Beldar on September 5, 1993 and his having worked as such upto December 31, 2001, the respondent in his reply averred that his (petitioner) services were never terminated but he had abandoned the job on his own after December 31, 2001. Refuting the petitioner's allegation that Mangla Devi, Subhash Chand, Kishori Lal, Pritam Singh and Mangal Singh, who were junior to him, were retained in service by the H.P. Forest Department, the respondent averred that in view of the petitioner having himself abandoned the job, no provision of the Act could be said to have been violated. It is also averred that the project (Indo-German Changer Project) under which the petitioner was taken into employ by the respondent, came to an end on March 31, 2006, and that in view of this position also, the petitioner is not entitled to any relief.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from the service of the petitioner by the respondent is proper and justified? .  
..OPP
2. If the above issue is proved in the affirmative, what relief the petitioner is entitled to from the respondent?  
..OPP
3. Whether the relief as asserted by the claimant against the respondent is not maintainable in view of closure of the undertaking?  
..OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | No   |
| Issue 2 : | He is entitled to reinstatement, continuity of service and back-wages as mentioned in this issue.  |
| Issue 3 : | Indo-German Changer Project having come to an end and the charge in respect thereof having been given to the Divisional Forest Officer, Palampur, the liability to comply with the award is of the latter. |
| Issue 4 : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. In the statement of claim, the Director, Indo-German Changer Project, Palampur (respondent) is averred to have taken the petitioner into his employ as daily waged Beldar on September 5, 1993. There is no gainsaying fact that the petitioner worked in the said project from September 5, 1993 to December 31, 2001. Also, there is no denying the fact that the project in which the petitioner worked during the said period, came to an end on March 31, 2006. But before the project came to an end, the petitioner, who felt aggrieved by his retrenchment, raised an industrial dispute which was referred to this Court by the appropriate Government on September 6, 2007, that is, after the project came to a close. During the pendency of the matter, the petitioner's counsel made an application dated November 26, 2007 for correction of the respondent's address. In the application, it was inter alia averred that "the respondent has handed over the charge to the Divisional Forest Officer, Division Office, Palampur, District Kangra, H.P." On the basis of this averment, the respondent was sought to be served at the following address: "The Director, Changer Project, Palampur, C/o Divisional Forest Officer, Forest Division Office, Palampur, District Kangra (H.P.)" The petitioner's prayer, it appears, found favour with my Ld. Predecessor-in-office, and upon a notice ordered to be served upon the Divisional Forest Officer, Division Office, Palampur, he filed his aforementioned reply and contested the petitioner's claim.

8. One of the main contentions of the respondent is that the petitioner having himself abandoned the job on January 1, 2002, no provision of the Act can be said to have been violated. I am not impressed with this contention. The reason being that in substantiation of his claim that the petitioner had himself abandoned the job, the respondent did not choose to bring on record the muster roll wherein the petitioner may have been marked absent after December 31, 2001. It is therefore difficult to accept the respondent's claim. More so, in view of the evidence led by the petitioner, which is demonstrative of his services having been terminated by the respondent on January 1, 2002.

9. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my thinking, is in the affirmative in view of the materials on record.

10. Claiming to have worked for 252 days in 1995, 311 days in 1996, 354 days in 1997, 327 days in 1998, 320 days in 1999, 355 days in 2000 and 344 days in 2001, the petitioner in his affidavit Ex. PW1/A claimed to have thus completed 240 days in each of the said calendar years. This claim having not been challenged during his cross-examination by the respondent deserves acceptance. More so, in view of the mandays chart Ex. PW1/B the correctness of which has not disputed by the respondent. The said document is indicative of the petitioner having worked for 58 days in 1992, 260 days in 1994, 252 days in 1995, 311 days in 1996, 354 days in 1997, 327 days in 1998, 320 days in 1999, 355 days in 2000 and 344 days in 2001 in the project in question. Section 25-F of the Act, which is alleged to have been violated by the respondent, says:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

11. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(d) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

12. Since the petitioner is proved to have completed more than 240 days during the period of 12 calendar months preceding the date of his retrenchment, his services could not be terminated unless he was served with one month.s notice and paid retrenchment compensation as envisaged under Section 25-F of the Act. But the respondent having undeniably failed so to do decidedly violated the said provisions.

13. In terminating the services of the petitioner, the respondent appears to have violated the provisions of Section 25-G of the Act as well. The said Section provides:

**“25-G. Procedure for retrenchment. –** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

14. The petitioner in paragraph 4 of his affidavit Ex. PW1/A, which was tendered by way of his examination-in-chief, maintained that at the time his services were terminated, the workmen namely Mangla Devi, Subhash Chand, Kishori Lal, Pritam Singh and Mangal Singh, who were junior to him, were retained in service by the respondent. This deposition having not being specifically challenged during his cross-examination by the respondent, the respondent can safely be held to have violated the provisions of Section 25-G of the Act as well.

15. However, the petitioner's allegation that the respondent had violated the provisions of Section 25-H and 25-N of the Act as well, to my mind, does not appear to have been substantiated. The petitioner's affidavit Ex. PW1/A as also his cross-examination as PW1 are non-existent in the names of the persons who were allegedly appointed by the respondent after his retrenchment. The materials on record thus being too scanty and nebulous to lend assurance to his allegation that new workers were appointed after the termination of his services, the respondent cannot be said to have been proved to have violated the provisions of the Section 25-H of the Act. Also, the allegation of violation of the provisions of Section 25-N of the Act cannot be said to have been established for want of plausible evidence.

16. The upshot is that in terminating the services of the petitioner, the respondent violated the provisions of Section 25-F and 25-G of the Act. In other words, the termination of the services of the petitioner was unlawful. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 2

17. Ld. Dy. D.A. appearing for the respondent canvassed with considerable fervor that as the project in which the petitioner was engaged came to an end on March 31, 2006, no relief could in law be granted in favour of the petitioner. This contention, to my mind, appears to be ill conceived for two reasons. One; the petitioner's employment had not come to an end simultaneously with the termination of the project, but his services were terminated on January 1, 2002, that is, before the project came to an end. Two; non-existence of such evidence as may indicate that the petitioner was employed in the project in question for a temporary duration or until the expiration of the project period, and he was made aware of his having been so employed at the commencement of his employment. The contention raised therefore merits rejection and is rejected.

18. In view of what has been held under the above issue 1, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment. He in his affidavit Ex. PW1/A inter alia deposed:

**“That it is specifically submitted here that after termination the services of applicant the applicant is still unemployed and not gainfully employed anywhere in Government or Semi Government, Corporation, Board and in any Private Establishment it is again submitted here that the applicant was getting Rs.55/- Per Day as minimum wages fixed by the State Government to the daily wager workers of State Government.”**

This deposition having not been challenged during his cross-examination by the respondent and there being no materials on record to show that he was gainfully employed after his retrenchment, I have no hesitation in holding that he is entitled to back-wages from the date of termination of his services. (January 1, 2002). The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 3

19. No doubt the project in which the petitioner was employed came to an end on March 31, 2006, but the liability to satisfy the award on behalf of the respondent (Director, Indo-German Changer Project, Palampur) is of the Divisional Forest Officer, Forest Division, Palampur in view of the facts and circumstances of the case. The respondent's witness R.S. Banyal, Divisional Forest Officer, Forest Division, Palampur, maintained in his cross-examination as RW1 that the Changer Project came to an end on March 31, 2006 whereafter the seniority list (in respect of the workmen engaged in the project) was handed over in the Divisional Forest Office, Palampur. He also testified that the record in respect of the project was available in the office of Divisional Forest Officer, Palampur. This deposition is indicative of the entire record, which was maintained in respect of the workers employed in the project in question, having been handed over to the Divisional Forest Officer, Forest Division, Palampur. Evidently thus, the Divisional Forest Officer, Forest Division, Palampur, who stood saddled with the responsibility of taking charge of the entire record of the project, was essentially involved in the project work, which was undertaken following an agreement entered into by the State Government. So, it is in fact the State Government which is liable to redress the petitioner's grievance. However, the Divisional Forest Officer, Palampur, who is in the employ of the State Forest Department and who was essentially involved in the project work in question and also saddled with the responsibility of the taking charge of the entire record of the project, can in law be fastened with the liability of satisfying the award on behalf of the respondent (Director, Indo-German Changer Project, Palampur) and I order accordingly. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

## RELIEF

20. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service and full back-wages from the date of his unlawful retrenchment (January 1, 2002). The respondent is directed to reinstate him within a period of 90 days from today. The said full back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of December, 2008.

By order,  
S.S. SEN.  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 120/2005  
Date of Institution : 2. 8. 2005  
Date of decision : 28.2.2009

Shri Dahlu Ram S/o Shri Gopala Ram, Vill. Dooka, P.O. Seri-Kothi, Tehsil, Sundernagar, Distt. Mandi, H.P.  
.Petitioner

*Versus*

Divisional Forest Officer, Forest Division, Sundernagar, Distt. Mandi, H.P.  
.Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. M.L. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether the termination of services of Shri Dahlu Ram S/o Shri Gopala Ram workman by the Divisional Forest Officer, Forest Division, Sundernagar, District Mandi, H.P. w.e.f. 1-4-2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in Kangoo Range of Sundernagar Forest Division in 1998-99, and that he worked as such till the end of March, 2003. On April 1, 2003, his services were suddenly terminated by the respondent. Claiming to have worked for more than 240 days in each calendar year, the petitioner averred that at the time his services were dispensed with no notice was given to him nor was he paid any retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time his services were terminated. Claiming to have requested the respondent as also the Forest Range Officer concerned to re-engage him, the petitioner further averred that as his requests for re-engagement fell on a deaf ear, he served the respondent with a notice under Section 2-A of the Act, but without effect. Left with no option, he later raised an industrial dispute, which is encompassed in the reference in question. He prays for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prays for the grant of full back-wages and other consequential service benefits including continuity of service.

3. The respondent in his reply averred that the petitioner was engaged as a daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division in June, 1999 and dis-engaged on completion of the works in July, 2005. Disputing the petitioner's claim of having been dis-engaged in the year 2003, the respondent further averred that the petitioner had not completed 240 days in each calendar year except the year 2002; that the forestry works against which he was engaged was of a seasonal nature, and that he had worked upto July, 2005 intermittently keeping in view the availability of works and funds. There, therefore, exists no industrial dispute and the reference is not covered under the Act.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the services of the petitioner were terminated by the respondent on April 1, 2003. . .OPP
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . .OPP
3. Whether the petitioner was engaged as daily waged labourer for seasonal forestry works subject to availability of work and funds and dis-engaged on completion of the works as alleged. . .OPR
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1	No
Issue 2	Issue 1 having not been proved, the petitioner is not entitled to any relief.
Issue 3	No
Issue 4	The petition dismissed per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division in 1999, is not disputed by the respondent. What is disputed by the respondent is his claim of having been retrenched w.e.f. April, 2003. The respondent's claim that the services of the petitioner were not terminated in April, 2003, to my thinking, appears to having a ring of truth in view of the materials on record. The petitioner in his affidavit Ex. PW1/A inter alia maintained that he had worked as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division till the end of March, 2003, and that his services were terminated by the respondent orally w.e.f. April, 2003. But his claim of having worked „till the end of March, 2003. does not find assurance from the mandays chart Ex. RW1/B, which is indicative of his having not worked even for a single day in the month of March, 2003. Also, his claim that the respondent had terminated his services orally w.e.f. April, 2003, stands falsified by what he maintained in his cross-examination as PW1. He in his cross-examination as PW1 deposed that he had worked for 240 days every year from 2001 to 2005. If to go by this deposition of his, his claim that his services were terminated w.e.f. April, 2003 cannot be taken without a pinch of salt. More so, in view of the aforementioned mandays chart which is demonstrative of his having not worked even for a single day in the months of March, April, May, June, August and December, 2003. In the mandays chart Ex. RW1/B, he is shown to have worked for 23, 15, 10, 11, 14, 11, 24, 3, 4, 17, 5 and 13 days in the months of January, February, July, September, October and November, 2003, August and December, 2004 and January, February, March and July, 2005 respectively.

7. In view of the above, there is no escape from the conclusion that the petitioner has failed to substantiate his allegation that his services were terminated by the respondent w.e.f. April, 2003. The issue under discussion is therefore held in the negative.

##### ISSUE 2

8. In view of the above issue 1 having not been proved, the petitioner is not entitled to any relief. The issue under discussion is held accordingly.

##### ISSUE 3

9. In the respondent's reply as also in his affidavit Ex. RW1/A, the petitioner is stated to have been engaged as daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division during June, 1999. The respondent to establish this claim ought to have adduced in

evidence the muster roll for the month of June, 1999, or any other document wherein the petitioner may have been shown to have been engaged for „seasonal forestry works., but he failed so to do. Also, the respondent to substantiate his claim that the services of the petitioner were dispensed with on completion of the work as against which he was engaged, ought to have led documentary evidence including the muster roll for the month of July, 2005, but he failed to do even this. It is therefore difficult to accept his claim that the petitioner was engaged for „casual and seasonal forestry works., and that his services were terminated on completion of the works in July, 2005. More so, in view of the seniority list Ex. RW1/C, which is indicative of certain workmen having worked for more than 240 days every calendar year from 1997 to 2006. Had the respondent been true in his claim that the petitioner was engaged as against seasonal forestry works, and that such works came to an end in July, 2005, certain workmen would not have been shown to have worked almost whole of the year during the calendar years from 1997 to 2006 in the seniority list Ex. RW1/C. The inescapable conclusion therefore is that the respondent's claim of having engaged the petitioner as against seasonal forestry works and terminated his services on completion of these works in July, 2005, is nothing but falsity. The issue under discussion is therefore held in the negative.

## RELIEF

10. Judged in the light of my findings on the above issue 1, the claim petition fails and the petitioner is held not entitled to any relief. As a result, the reference is dismissed. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 60/2006  
Date of Institution : 20.3.2006  
Date of decision : 31.12.2008

Sh. Dalbir Singh Rana S/o Sh. Baldev Singh, workman, Village and P.O. Gehi Lamod, Nurpur, Distt. Kangra,  
H.P.

. .Petitioner.

*Versus*

The General Manager and Sale Manager, M/s. Amritsar Beverages Limited.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. V.S. Mandeel, Adv.  
For the Respondent : Sh. B.K. Sood, Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Sh. Dalbir Singh Rana s/o Sh. Baldev Singh, workman by the (1) The General Manager, M/s. Amritsar Beverages Limited, Amritsar, Punjab and (2) The Sale Manager, M/s. Amritsar Beverages Limited, G.T. Road, Kandwal, Tehsil Nurpur, District Kangra, H.P. w.e.f. 4.7.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was appointed by the respondents on a monthly salary of Rs.2500/- in the month of March, 1998. In June, 2002, he suffered from fever and could not therefore join his duties for three days. His services were later dispensed with by the respondents by a letter

dated July 4, 2002, even though he had been performing his duties efficiently and with devotion. At the time of his retrenchment, he, according to him, was getting a monthly salary of Rs.3900/-, besides, T.A. and other benefits. Claiming to have worked for more than 240 days „in a calendar year., the petitioner alleged that in terminating his services, the respondents violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) because no prior notice was served for him nor was he paid any retrenchment compensation. Not only that, the respondents did not pay him even his outstanding dues amounting to more than Rs.95,100/-. The petitioner therefore prayed for a direction to the respondents to re-engage him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged for accounts work in March, 1998. They also admitted that his services were dispensed with on July 4, 2002. The reason for the termination of his services, according to the respondents, was his negligent attitude and frequent absence from work without leave. Disputing the petitioner.s claim of having worked for more than 240 days in a „completed year., the respondents averred that in terminating his services, they did not violate any provision of the Act. They therefore prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the termination from the service of the petitioner by the respondent is proper and justified? . .OPP
2. If the above issue is proved in the affirmative, what relief of service benefit the petitioner is entitled to? . .OPP
3. Whether the claim petition is maintainable before this Court? OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes  |
| Issue 2 : | He is not entitled to any relief.                          |
| Issue 3 : | No   |
| Issue 4 : | The petition is dismissed per operative part of the award. |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The petitioner.s claim of having been engaged by the respondents for doing accounts work in the month of March, 1998, is not disputed by the latter. Also his allegation that his services were dispensed with on July, 2002, is not denied by them. What is disputed by the respondents is the petitioner.s claim of having worked for more than 240 days „in a calendar year.. Section 25-F of the Act, which alleged to have been violated by the respondents, provides:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (i) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (ii) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (iii) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”



8. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(9) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(10) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

11. The respondents' denial of the petitioner's claim of having worked for more than 240 days, in a calendar year, to my thinking, does not appear to be without substance. Nowhere in his pleadings did the petitioner aver that he had completed 240 days during the period of 12 calendar months preceding the date of his removal from service. Also, nowhere in his statement as PW1 did he maintain that he had worked for 240 days during the period of 12 calendar months preceding the date of termination of his services. There being thus no proof of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the respondents were not obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner's contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot therefore be accepted. So, the termination of his services by the respondents cannot be said to be improper or unjustified. More so, when the evidence led by the respondents is demonstrative of his being negligent in the execution of his work and his having remained absent from time to time without obtaining leave. The issue under discussion is therefore held in favour of the respondents and against the petitioner.

**ISSUE 2**

12. In view of what has been held under the foregoing issues the petitioner is not entitled to any relief. The issue on hand is held accordingly.

**ISSUE 3**

13. In view of my findings on the above issue 1, the claim petition is not maintainable. The issue under discussion is therefore held in favour of the respondents and against the petitioner.

**RELIEF**

14. Judged in the light of my findings on the issues above, particularly issue 1, the petition fails and is hereby dismissed. There shall be no order as to costs. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records after due completion.

Announced in the open Court today this 31st day of December, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 665/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Shri Deep Kumar S/o Shri Amar Singh, Village Rakheda, PO Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Deep Kumar S/o Shri Amar Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from

November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

- |    |  |     |
|----|--|-----|
| 1. | Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. | Whether the petition is not maintainable, as alleged.  | OPR |
| 3. | Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. | Whether the petitioner is guilty of suppressio veri.   | OPR |
| 5. | Whether the petitioner is estopped from filing the claim petition by his act and conduct.  | OPR |
| 6. | Relief.  | OPR |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);

(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being

heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(7) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared

the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 &

947/2007-9374, dated 25.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 99/2007  
Date of Institution : 3.9.2007  
Date of decision : 31.3.2009

Shri Devinder Kumar S/o Shri Sukru Ram, Vill. Saul, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P.  
. Petitioner

*Versus*

Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P.  
. Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Devinder Kumar S/o Shri Sukru Ram workman by the Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P. w.e.f. June, 2003 without***



*complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in the month of January, 1998, and that he worked as such in Wild Life Division, Kullu until September, 2003. His services were, however, terminated by the respondent w.e.f. September, 2003 without giving him one month's notice and paying him retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have never absented from work, the petitioner further averred that during the period of his employment, the respondent had been giving fictional breaks in his service, even though there was availability of work and funds. In terminating the services of the petitioner, the respondent, it is further averred, also violated the principle of „Last Come First Go. as envisaged under Section 25G of the Act, because the workmen namely Chander, Brij Lal, Santosh Kumar, Salig Ram and others, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25N of the Act, because no prior permission for termination of services of the petitioner was obtained from the appropriate Government nor was he paid retrenchment compensation. It is also averred that the respondent had after the petitioner's retrenchment engaged new workers on daily wage basis without giving the petitioner an opportunity to offer himself for re-employment and thus violated the provisions of Section 25H of the Act as well. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential service benefits. He also prayed for a direction to the respondent to take into account the periods of break in his service towards continuity of service.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in the month of January, 1998, but denied having terminated his services from September, 2003 unlawfully. Claiming the work of his department to be of a seasonal nature, the respondent averred that the petitioner was engaged as casual worker subject to availability of work/funds and that he had worked intermittently. Denying having given fictional breaks in the service of the petitioner, the respondent further averred that the petitioner had worked intermittently "depending upon the availability of funds/works" upto August, 2007 whereafter he on his own did not turn up for work. No workman junior to the petitioner, according to the respondent, was retained in service nor was any new worker engaged on muster roll basis after the petitioner abandoned the job on his own. In view of the seasonal nature of the work for which the petitioner was engaged as casual worker subject to availability of work and funds, no provision of the Act, according to the respondent, can be said to have been violated. More so, when he on his own did not turn up for work after August, 2007. It is also averred that the petitioner is guilty of suppressio veri and the petition not maintainable in the present form.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petitioner is guilty of suppressio veri. . .OPR
3. Whether the claim petition is not maintainable. . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |   |
|-----------|---|
| Issue 1 : | The respondent is not proved to have terminated the services of the petitioner w.e.f. June, 2003 as mentioned in the Reference. He is therefore not entitled to the relief he prayed for. |
| Issue 2 : | Yes.  |
| Issue 3 : | Yes.  |
| Relief. : | Petition dismissed per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. In the Reference, which appears to have been based on the Conciliation Officer-cum-Labour Inspector's report no. 694-95 dated December 31, 2005, services of the petitioner are stated to have been terminated w.e.f. June,

2003. But nowhere in his statement of claim did the petitioner allege that his services were terminated w.e.f. June, 2003. What is inter alia averred by him is that he was engaged by the respondent as daily waged Beldar in the month of January, 1998, and that his services were illegally terminated by the respondent from September, 2003. But belying his claim that his services were terminated from September, 2003, the petitioner in paragraph 1 of his affidavit Ex. PW1/A, however, maintained that he had continuously worked upto September, 2003. In paragraphs 3 and 8 of his affidavit, he, however, belied even this claim of his by stating that his services were terminated in the month of/from June, 2003. But the materials on record are not demonstrative of his services having been terminated with effect from June, 2003. The mandays chart Ex. PW1/E the correctness of which is not disputed by the petitioner, is indicative of his having worked for 161, 224, 228, 240 and 271 days in 1998, 1999, 2000, 2001 and 2002 respectively and 31, 28, 31, 30, 31, 20, 19 and 4 days in the months of January, February, March, April, May, June, August and September, 2003 respectively. In view of this document, the respondent's denial of having terminated the services of the petitioner and the latter's inconsistent stand as to the date of termination of his services, I have no hesitation in holding that his services were not terminated with effect from June, 2003, not to speak of the alleged illegality in the termination of his services w.e.f. the said point of time as mentioned in the Reference. He is therefore not entitled to the relief he prayed for. The issue under discussion is accordingly held against him and in favour of the respondent.

## ISSUE 2

8. In view of what has been observed under the foregoing issue, the petitioner is decidedly guilty of suppressio veri. The issue on hand is therefore held in favour of the respondent and against the petitioner.

## ISSUE 3

9. In view of my findings on the above issue 1, the petition is not maintainable. The issue on hand is therefore held in favour of the respondent and against the petitioner.

## RELIEF

10. Judged in the light of my findings on the issues above, particularly issue 1, the claim petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 163/2007  
Date of Institution : 1.11.2007  
Date of decision : 24.11.2008

Shri Devki Nandan S/o Shri Dhani Ram, Village Kalother, P.O. Badgaon, Tehsil Sadar, District Mandi, H.P.

. .Petitioner

Versus

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.

. .Respondent

For the Petitioner :

Sh. N.L. Kaundal, vice AR

For the Respondent :

Sh. Gaurav Sharma, vice Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Shri Devki Nandan S/o Shri Dhani Ram workman by the Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 25.4.2000 without***

***complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him were retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on November 3, 1997, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto April 15, 2000. On April 25, 2000, his services were terminated by the respondent by serving with him a notice dated February 23, 2000. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting for a call till February, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on November 3, 1997, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on October 25, 1997, and that he had worked upto April 24, 2000 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shive Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petition suffers from the vice of delay and laches. . .OPR
3. Whether the petitioner is estopped from filing the present petition by his act and conduct. . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 2 : No  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. Disputing the petitioner's claim of having been engaged on November 3, 1997, the respondent averred that he (petitioner) was engaged as daily waged beldar on October 25, 1997, and that he had worked as such upto April 24, 2000. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**

11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

“12. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of „retrenchment.

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent.s contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

16. However, the petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a

one month's notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner's contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner's allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

**“As per the record, Devki Nandan (petitioner) was engaged on 25.10.1997 and he worked upto 24.4.2000. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chand Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working....”**

18. The respondent's aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (25.10.1997). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

## ISSUE 2

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

### ISSUE 3

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

### RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as daily waged beldar (25.10.1997). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstate him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (25.4.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 119/2005  
Date of Institution : 2. 8. 2005  
Date of decision : 28.2.2009

Shri Dhungal Ram S/o Shri Durga Ram, Vill. Ropa, P.O. Seri-Kothi, Tehsil, Sundernagar, Distt. Mandi, H.P.  
.Petitioner

*Versus*

Divisional Forest Officer, Forest Division, Sundernagar, Distt. Mandi, H.P.  
.Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. M.L. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Dhungal Ram S/o Shri Durga Ram workman by the Divisional Forest Officer, Forest Division, Sundernagar, District Mandi, H.P. w.e.f. 1-4-2003 without***

*complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in Kangoo Range of Sundernagar Forest Division in 2000, worked as such for two months and re-engaged in May, 2001. Claiming to have worked till the end of March, 2003, the petitioner alleged that on April 1, 2003, his services were suddenly terminated by the respondent. Claiming to have worked for more than 240 days in each calendar year, the petitioner averred that at the time his services were dispensed with no notice was given to him nor was he paid any retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time his services were terminated. Claiming to have requested the respondent as also the Forest Range Officer concerned to re-engage him, the petitioner further averred that as his requests fell on a deaf ear, he served the respondent with a notice under Section 2-A of the Act on May 8, 2003, but without effect. Left with no option, he later raised an industrial dispute, which is encompassed in the reference in question. He prays for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prays for the grant of full back-wages and other consequential service benefits including continuity of service.

3. The respondent in his reply averred that the petitioner was engaged as a daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division in May, 2001 and dis-engaged on completion of the works in July, 2005. Disputing the petitioner's claim of having been dis-engaged in the year 2003, the respondent further averred that the petitioner had not completed 240 days in each calendar year except the year 2002; that the forestry works against which he was engaged was of a seasonal nature, and that he had worked upto February, 2005 intermittently keeping in view the availability of works and funds. There, therefore, exists no industrial dispute and the reference is not covered under the Act.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the services of the petitioner were terminated by the respondent on April 1, 2003. . .OPP
2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
3. Whether the petitioner was engaged as daily waged labourer for seasonal forestry works subject to availability of work and funds and dis-engaged on completion of the works as alleged. . .OPR
4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1	No
Issue 2	Issue 1 having not been proved, the petitioner is not entitled to any relief.
Issue 3	No
Issue 4	The petition dismissed per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division in May, 2001, is not disputed by the respondent. What is disputed by the respondent is his claim of having been retrenched w.e.f. April, 2003. The respondent's claim that the services of the petitioner were not terminated in April, 2003, to my thinking, appears to be having a ring of truth in view of the materials on record. The petitioner in his affidavit Ex. PW1/A inter alia maintained that he had worked as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division till the end of March, 2003, and that his services were terminated by the respondent orally w.e.f. April 1, 2003. But his claim of having worked „till the end of March, 2003. does not find assurance from the mandays chart Ex. RW1/B, which is indicative of his having not worked even for a single day in the months of January, February and March, 2003. Also, his claim that the respondent had terminated his services orally w.e.f. April, 2003, stands falsified by what he maintained in his cross-examination as PW1. He in his cross-examination as PW1 deposed that he had worked for 240 days every year from 2001 to 2005. If to go by this deposition of his, his claim that his services were terminated w.e.f. April, 2003 cannot be taken without a pinch of salt. More so, in view of the aforementioned mandays chart which is demonstrative of his having not worked even for a



single day in the months of January, February, March, April, May, June, August and December, 2003. In the mandays chart Ex. RW1/B, he is shown to have worked for 6, 13, 15, 5, 3, 5, 22 and 11 days in the months of July, September, October and November, 2003, December, 2004 and January, February and November, 2005 respectively.

7. In view of the above, there is no escape from the conclusion that the petitioner has failed to substantiate his allegation that his services were terminated by the respondent w.e.f. April, 2003. The issue under discussion is therefore held in the negative.

## ISSUE 2

8. In view of the above issue 1 having not been proved, the petitioner is not entitled to any relief. The issue under discussion is held accordingly.

## ISSUE 3

9. In the respondent's reply as also in his affidavit Ex. RW1/A, the petitioner is stated to have been engaged as daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division during May, 2001. The respondent to establish this claim ought to have adduced in evidence the muster roll for the month of May, 2001, or any other document wherein the petitioner may have been shown to have been engaged for „seasonal forestry works., but he failed so to do. Also, the respondent to substantiate his claim that the services of the petitioner were dispensed with on completion of the work as against which he was engaged, ought to have led documentary evidence including the muster roll for the month of July, 2005, but he failed to do even this. It is therefore difficult to accept his claim that the petitioner was engaged for „casual and seasonal forestry works., and that his services were terminated on completion of the works in July, 2005. More so, in view of the seniority list Ex. RW1/C, which is indicative of certain workmen having worked for more than 240 days every calendar year from 1997 to 2006. Had the respondent been true in his claim that the petitioner was engaged as against seasonal forestry works, and that such works came to an end in July, 2005, certain workmen would not have been shown to have worked almost whole of the year during the calendar years from 1997 to 2006 in the seniority list Ex. RW1/C. The inescapable conclusion therefore is that the respondent's claim of having engaged the petitioner as against seasonal forestry works and terminated his services on completion of these works in July, 2005, is nothing but falsity. The issue under discussion is therefore held in the negative.

## RELIEF

10. Judged in the light of my findings on the above issue 1, the claim petition fails and the petitioner is held not entitled to any relief. As a result, the reference is dismissed. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 605/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Gandhi Ram S/o Shri Mahajan Ram, Village Kapahi, PO Sari, Tehsil Sarkaghat, Distt. Mandi, H.P.

*. .Petitioner*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*. .Respondent*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Gandhi Ram S/o Shri Mahajan Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers were indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In

view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1063/2007-9373, dated 25.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 628/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Gian Chand S/o Shri Tonshu Ram, R/o Village Jajarkukain P.O. Baradla, Tehsil Sarkaghat, Distt. Mandi,  
H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Gian Chand S/o Shri Tonshu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment.



as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

## REASONS FOR FINDINGS

## ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of

HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified

authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to

him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9897 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated October 10, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 630/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Shri Gian Chand S/o Shri Sant Ram R/o Village Jajar Kukaom P.O. Baradla Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Gian Chand S/o Shri Sant Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with

effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

“25L (a) “industrial establishment” means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);



(iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being

heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B,

according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9901 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide

Notification No.11-23/84(Lab) 1.D/08-Mandi dated October 3, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 179/2007  
Date of Institution : 1.11.2007  
Date of decision : 24.11.2008

Shri Gopal Singh S/o Shri Dhani Ram, Village Kalothar, P.O. Bhargaon, Tehsil Kotli, District Mandi, H.P.  
..Petitioner

*Versus*

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.  
..Respondent

For the Petitioner : Sh. N.L. Kaundal, vice AR  
For the Respondent : Sh. Gaurav Sharma, vice Adv.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Gopal Singh S/o Shri Dhani Ram workman by the Senior Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 16.4.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on September 24, 1997, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto April 15, 2000. On April 16, 2000, his services were terminated by the respondent by serving with him a notice dated February 23, 2000. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting for a call till February, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on September 24, 1997, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on September 25, 1997, and that he had worked upto April 18, 2000 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shiv Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petition suffers from the vice of delay and laches. . . .OPR
3. Whether the petitioner is estopped from filing the present petition by his act and conduct. . . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to the relief as mentioned in the operative part of the award.
Issue 2 :	No
Issue 3 :	No
Relief :	The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

7. Disputing the petitioner's claim of having been engaged on September 24, 1997, the respondent averred that he (petitioner) was engaged as daily waged beldar on September 25, 1997, and that he had worked as such upto April 18, 2000. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**

11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

“1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of, retrenchment.

2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent's contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

16. However, the petitioner's claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a one month's notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner's contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner's allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of



Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

**“As per the record, Gopal Singh (petitioner) was engaged on 25.9.1997 and he worked upto 18.4.2000. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chand Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working.....”**

18. The respondent.s aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (24.9.1997). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

## ISSUE 2

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

**“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services**

**have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”**

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

### ISSUE 3

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

### RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as daily waged beldar (24.9.1997). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstate him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (16.4.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 611/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Harnam Singh S/o Shri Bharepatu Ram, Village Gorat, PO Sayoh, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Harnam Singh S/o Shri Bharepatu Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back**

*wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"*

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . .OPR

4. Whether the petitioner is guilty of suppressio veri. . .OPR
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
  6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:
- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.**-(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject

matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1032/2007-9269, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.



## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 654/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Hem Raj S/o Shri Hari Lal, R/O Village Mashdhan, P.O. Deo Baradla, Tehsil Sarkaghat, Distt. Mandi,  
H.P.

*.Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*.Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Hem Raj S/o Shri Hari Lal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not

being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be

notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified

authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

- (a) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (b) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to

him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9266 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 3/2003

Date of Institution : 10.1.2003

Date of decision : 26.11.2008

Sh. Hem Raj S/o Sh. Som Nath Village, Machkehad, P.O. Ahju, Tehsil, Joginder Nagar, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. Vijay Kaundal, Adv. vice

For the Respondent :

Sh. Gaurav Sharma, Adv. vice

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of the services of Sh. Hem Raj S/o Sh. Som Nath w.e.f. 21.7.2000 by the Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. without complying the provisions of section 25-G and 25-H of the Industrial Disputes Act, 1947; where as work and funds are available as alleged by workman, is proper and justified? If not, what relief of service benefits the aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in Joginder Nagar Division of HPSEB in 1993, and that he worked as such upto 2003. Later his services were dispensed with by the respondent orally without complying with the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) even though he had worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. In dispensing with the services of the petitioner, the respondent also violated the principle of „last come first go. as envisaged under Section 25-G of the Act. Not only that, the respondent, according to the petitioner, also committed breach of the provisions of Section 25(vi) of the Act by making fresh recruitments without taking into consideration the petitioner.s seniority. The petitioner therefore prayed for a direction to the respondent to reinstate him with all consequential service benefits.

3. Disputing the petitioner.s claim of having been engaged as daily waged Beldar in 1993, the respondent in his reply averred that he (petitioner) was engaged as daily waged Beldar on May 25, 1994 and worked as such upto July 20, 2000 with interruptions/breaks caused by him in his service on his own. Thereafter, he abandoned the job without informing the respondent. In view of his having abandoned the job on his own, his allegation of termination of his services, according to the respondent, is nothing but falsity. Disputing the petitioner.s claim of having worked for 240 days during the period of 12 calendar months preceding the date of termination of his services, the respondent further averred that he had worked only for a short period of 149 days. In view of the petitioner himself having abandoned the job, his allegation of violation of the principle of „last come first go., according to the respondent, is absolutely untenable. Also, his allegation that the respondent had violated the provisions of Section 25(vi) of the Act, is false and baseless, for no fresh recruitment was made after abandonment of the job by him. The respondent.s other averments relate to estoppel, limitation, misjoinder of parties and non-joinder of necessary parties.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition. He averred that the workmen namely Kashmir Singh S/o Karam Chand, Tara Chand S/o Durga Ram, Subhash Chand S/o Duni Chand, Rajinder S/o Biri Singh, and Balbir Singh s/o Shvi Pal, who were junior to him, having been retained in service at the time his services were dispensed with, the respondent had violated the provisions of Section 25-G of the Act. Besides, the respondent also violated the provisions of Sections 25-F and 25-H of the Act and Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment Act, 1946.

5. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:



1. Whether the services of the petitioner were terminated by the respondent w.e.f. 21.7.2000 without complying with the provisions of I.D. Act, despite availability of the work in an illegal and unjustified manner? . . .OPP
2. If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled including compensation if any? . . .OPP
3. Whether the petitioner has no right to maintain the present petition as alleged? . . .OPR
4. Whether the petition is not within time? . . .OPR
5. Whether the petition is bad for non-joinder and mis-joinder of necessary parties? . . .OPR
6. Whether the petitioner is estopped from filing the present petition his act, conduct and acquiescence as alleged. . .OPR
7. Relief.

6. Be it stated that holding issue 1 in the affirmative and issues 3 to 6 in the negative, my Ld. Predecessor-in-office allowed the claim petition, vide award dated September 6, 2005. The relief granted was:

**“In view of my findings on issues above, especially issues No.1 and 2 above, the dis-engagement of the petitioner by the respondent w.e.f. 20.7.2000 is in contravention of section 25-G of the Industrial Disputes Act, 1947 and also clause 14-2 of the Standing Orders of the respondent, therefore, the petitioner is entitled for his re-engagement in his original service in the same terms and conditions in which he was working prior to his dis-engagement. The petitioner is held entitled for his re-engagement with all consequential service benefits except back wages. The respondent is directed to re-engage the petitioner within a period of three months from the date of announcement of this award, failing which the petitioner shall be entitled for full back wages.”**

7. Aggrieved, the respondent preferred before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No.1382/2005) on various grounds. One of the grounds was that the HPSEB having been exempted from the applicability of the provisions of Standing Orders, reliance thereupon by the Tribunal was illegal. Upholding this contention, the Hon.ble High Court disposed the Writ Petition along with two other Civil Writ Petitions by a common judgment dated May 18, 2007. It was inter alia observed:

**“.....In this view of the matter, the Tribunal wrongly relied upon the provisions of the Standing Orders Act to hold that the disengagement is bad for want of issuance of notice giving 10 clear days to the employees. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee. With regard to the plea of delay and laches, in my view, the Tribunal has rightly come to the conclusion that there is no inordinate delay in the respondents exercising their statutory rights for pursuing their remedies.....During the course of hearing, it was further argued by the counsel for the respondents that in some of the matters there is admission on record that juniors have been retained in service and also employment has been given to new persons, thus violating Section 25G and 25H of the Act. According to the petitioner, it is disputed question, which cannot be gone into by this Court.....However, perusal of award shows that there is no finding on this aspect at all. Therefore, on this limited ground as to whether there is violation of provisions of Sections 25-G and 25-H of the Act, all the matters are remanded back for consideration by the Tribunal.....Even though the plea of limitation/delay and laches has been decided against the petitioner, however, while considering the issue of back wages, it would be open for the Tribunal to consider the same and decide accordingly.....”**

8. In view of these orders, the question that is required to be determined by this Court is:

**“Whether there is violation of the provisions of Sections 25-G and 25-H of the Act.”**

9. For the reasons to be recorded hereinafter, my answer to this question is in the affirmative.

#### REASONS FOR FINDINGS

10. The petitioner in his statement of claim inter alia averred that his services were dispensed with by the respondent orally without complying with the mandatory provisions of the Act. Refuting this allegation, the respondent, on the other hand, averred that the services of the petitioner were never terminated, but he had abandoned the job on his

own after July 20, 2000, and no provision of the Act could therefore be said to have been violated. But this claim, to my mind, does not ring true in view of the materials on record, particularly the muster roll Ex. R4, which is demonstrative of the same having been issued for the period from June 21, 2000 to July 20, 2000. By this document eight workmen including the petitioner whose name figures at serial no.3, were engaged, but the period of their employment, or say the period during which they worked, did not extend beyond July 10, 2000. None of the said 8 workers has been marked absent or shown to be present in the muster roll Ex. R4 after July 10, 2000, nor did the respondent bring on record the subsequently issued muster roll wherein the petitioner may have been shown absent. The respondent's claim that the petitioner had abandoned the job on his own after July 20, 2000 cannot therefore be taken without a pinch of salt. So, the petitioner's claim in his affidavit Ex. PW1/A that his services were terminated by the respondent, to my thinking, deserves acceptance and is accepted.

11. In his statement of claim, the petitioner alleged that in terminating his services, the respondent had failed to observe the principle of „last come first go.. In substantiation of this allegation, he swore an affidavit Ex. PW1/A wherein he alleged that the workmen namely Ram Chander S/o Lachhi Ram, Sambhu Ram S/o Kala Ram, Ami Chand S/o Moti Ram, Mohinder Kumar S/o Bir Singh, Dan Singh S/o Mouzi Ram, Sambhu Ram S/o Alam Ram, Dhiyan Chand S/o Haria Ram, Megh Singh S/o Balak Ram, Dan Singh S/o Gulab Chand, Tek Chand S/o Durga Ram, Kashmir Singh and Balbir Singh S/o Shiv Pal, who were junior to him, were retained in service by the respondent at the time of termination of his services. During the petitioner's cross-examination as PW1, the respondent suggested that some of the 12 workmen named in his affidavit were senior to him and some engaged on the basis of the orders of the Hon.ble Himachal Pradesh Administrative Tribunal. Although the petitioner admitted this claim of the respondent to be correct, the suggestion, to my thinking, is indicative of some of the 12 workmen to be junior to the petitioner. The respondent's witness B.R. Rana, then Assistant Engineer, Electrical Division Chountra, testified in his cross-examination RW1 that no person junior to the petitioner was retained. Having deposed so, he, however, maintained that some of the Beldars shown at serial nos. 1 to 12 in the petitioner's affidavit Ex. PW1/A might be junior to him. There is no denying the fact that the 12 workmen named in the petitioner's affidavit Ex. PW1/A are still in the employ of the respondent as Beldar. So, some of them, who were junior to the petitioner, having been retained at the time the petitioner's services were terminated, the respondent can safely be held to have violated the provisions of Section 25-G of the Act, which reads:

**“25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

12. However, as for the alleged violation of the provisions of Section 25-H of the Act, the same, to my mind, goes without proof, for no such plausible material has been brought on record as may lend assurance to the petitioner's allegation that after his removal from service the respondent had engaged fresh workmen. The respondent cannot therefore be said to have violated the said provisions of the Act.

13. The respondent having been found to have violated the provisions of Section 25-G of the Act, the point under discussion is partly held in the affirmative.

#### RELIEF

14. In view of the respondent having been found to have violated the provisions of Section 25-G of the Act, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held to reinstatement in the same capacity as in which he was working at the time his services were terminated. He is also held entitled to continuity of service from the date of his unlawful retrenchment. Besides, he is held entitled to 25% back-wages from the date of his retrenchment (July 21, 2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reason why he is held entitled to 25% back-wages is non-existence of such evidence as may show that he was not gainfully employed after his retrenchment. The respondent is directed to re-engage him within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 190/2007

Date of Institution : 27.11.2007

Date of decision : 31.3.2009

Shri Hoshiar Singh S/o Shri Prabhu Ram, Vill. Bhuwan, P.O. Talwana, Tehsil Ghumarwain, District Bilaspur, H.P.

. .Petitioner

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Ghumarwin, Distt. Bilaspur, H.P.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. S.S. Sippy, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Hoshiar Singh S/o Shri Prabhu Ram workman by the Executive Engineer, HPPWD Division, Ghumarwin, District Bilaspur, H.P. w.e.f. October, 1999 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior persons to him have been retained by the employer is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in HPPWD Sub Division, Bharari in Ghumarwin Tehsil in April, 1997, and that his services were terminated by the respondent in December, 1999. During the period of his employment, intermittent breaks were given in his service and he was not allowed to complete 240 days during the period of 12 calendar months preceding the date of his dis-engagement. In terminating his services, the respondent, it is further averred, violated the principle of „last come first go. as envisaged under Section 25-G of the Act, 1947 (the Act, for short), because the workmen namely Piar Singh, Subhash Kumar, Sanjeev Kumar, Prakash Chand and others, who were junior to him, were retained in service at the time his services were dispensed with. On the basis of these averments the petitioner prayed for a direction to the respondent to re-engage him with all consequential benefits.

3. Admitting the petitioner.s claim of having been engaged as daily waged Beldar in April, 1997, the respondent averred that he (petitioner) was engaged only for a period of 100 days under the Employment Assurance Scheme and there could therefore be no question of his completing 240 days during the period of 12 calendar months preceding the date of his removal from service. Services of the petitioner, according to the respondent, automatically stood terminated on termination of the scheme under which he was engaged for a period of 100 days. As to the petitioner.s allegation of violation of the provisions of Section 25-G of the Act, the respondent.s reply is:

***“.....It is submitted that the junior persons are working in the department as per the order of the Hon.ble Administrative Tribunal Shimla H.P. The engagement of the petitioner is holy come into the perview of the Employment Assurance Scheme for 100 days then the question of dis-engagement of the petitioner in arbitrary in nature does not arise at all. ....it is admitted that Sh. Piar Singh, Satish Kumar, Sanjeev Kumar are still working this Department Sh. Parkash Chand has expired now while in service. It is also admitted that the applicant was engaged prior to the above mentioned persons. However, it is denied that the applicant is senior to the above person, as seniority is counted only if the worker completes 240 days in a calendar year. The applicant has never completed 240 days of continuous service in any calendar year, therefore, his claim of seniority is wrong.....”***

On the basis of these averments, the respondent prayed for rejection of the petitioner.s claim.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the statement of claim.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petitioner was engaged under the Employment Assurance Scheme for 100 days only. If so, to what effect? . . .OPR
3. Whether the petition is not maintainable. . .OPR
4. Relief. . .OPR

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 25% back-wages and continuity of service from the date of termination of his services.  
 Issue 2 : No  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUES 1 and 2

7. These issues being inter-linked are taken up together.

8. The respondent.s claim that the petitioner was engaged as daily waged Beldar only for 100 days under the Employment Assurance Scheme, to my thinking, does not ring true in view of the mandays chart (Annexure R-2), which is demonstrative of the latter having worked for 175 days in 1997, 141 days in 1998 and 15 days in 1999. Had the respondent.s claim of having engaged the petitioner only for 100 days under the said scheme been true the latter would not have been allowed to work after the expiration of the period of time for which he was allegedly engaged. I am therefore not disposed to accept the respondent.s claim that the petitioner was engaged only for a period of 100 days under the Employment Assurance Scheme. More so, in view of the respondent.s failure to lead such documentary evidence as may lend assurance to his claim.

9. The petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my mind, appears to be tenable. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

10. Denying having violated these provisions, the respondent in his reply inter alia averred that “the junior persons are working in the department as per the order of the Hon.ble Administrative Tribunal Shimla H.P.” The respondent.s witness Lekh Ram Mehla, then Executive Engineer, HPPWD Division, Ghumarwin, also deposed in his affidavit Ex. RW1/A:

**“That the other labourers who are junior to the petitioner are working in the department, as per order of Administrative Tribunal Shimla H.P.”**

11. This deposition as also the respondent.s aforementioned reply lend credence only to the petitioner.s allegation that at the time his services were dispensed with certain workers, who were junior to him, were retained in service by the respondent. No such orders of the H.P. Administrative Tribunal have been brought on record as may lend assurance to the respondent.s claim that the workmen junior to the petitioner were working in the department on the basis thereof. As the respondent on his own showing established on record that certain workmen junior to the petitioner were retained in service at the time the latter.s services were dispensed with, he (respondent) can safely be held to have violated the provisions of Section 25-G of the Act. The petitioner is therefore entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is entitled to continuity of service from the date of his retrenchment (October, 1999). In view of the facts and circumstances of the case, he is held entitled to 25% back-wages from the date of termination of his services. Both the issues under discussion are accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

12. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## RELIEF

13. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated in October, 1999. Besides, he is held entitled to 25% back-wages and continuity of service from the said date. The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette. The file after completion be consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.Sen,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 61/2002  
Date of Institution : 16.2.2002  
Date of decision : 2.12.2008

Hoshiyara Ram S/o Sh. Maan Singh, Village-Nirohi P.O. Salooni, Distt. Chamba, H.P.

. .Petitioner.

*Versus*

Executive Engineer, H.P.P.W.D. Division Salooni, Distt. Chamba, H.P.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Manoj Kumar, adv. vice  
For the Respondent : Sh. Kuldeep Sen, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the oral termination w.e.f. 01-12-1998 of Sh. Hoshiyara Ram S/o Sh. Man Singh by the Executive Engineer, H.P.P.W.D. Division Salooni, Tehsil Salooni, Distt. Chamba, H.P. and intermittent break in service given to the concerned workman during the period 1995 to 1998 is legal and justified? If not, what seniority, service benefit and relief Sh. Hoshiyara Ram S/o Sh. Man Singh workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in HPPWD, Salooni Sub Division on November 7, 1995, and that he worked as such till December 1, 1998 when his services were terminated by the respondent orally. Alleging the respondent to have given intermittent breaks in his service during the period from 1995 to 1998, the petitioner further averred that he could not be able to complete 240 days in any calendar year and was thus deprived of the protection as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (for short, the Act). Besides, on account of the intermittent breaks in his service he could not be able to get the benefit of regularisation of his service as per policy of the State Government.

In terminating his services, the respondent, it is further alleged, violated the principle of „last come first go. as envisaged under Section 25-G of the Act, because the workmen namely Dharmender, Suresh Kumar and Bhanu who were junior to him, were retained at the time his services were dispensed with. The petitioner therefore prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were terminated. Besides, he prayed for the grant of full back-wages and other consequential service benefits including seniority etc. He also prayed for a direction to the respondent to take into account the period of intermittent breaks in his service in order to make him eligible for regularization of his service in future.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged beldar in November 1, 1995, but denied his allegation of termination of his service. The respondent also refuted the petitioner.s allegation that intermittent breaks were given in his service. Alleging the petitioner to be a habitual absentee, the respondent averred that no intermittent break was given in his service, but he had himself absented from time to time and never completed “the criteria of 240 days in any of the calendar years from 1995 to 2001”, and that he had abandoned the job on his own. Claiming the petitioner to have remained on the rolls of the respondent department upto March, 2001, the respondent further averred that he (petitioner) did not turn up thereafter, and that he having not worked for 240 days during the period of 12 calendar months preceding the date of abandonment of the job by him, the provisions of Section 25-F of the Act could not be said to have been violated. Also, there was no violation of the provisions of Section 25-G, for no workman junior to the petitioner was retained by the respondent. On the basis of these averments the respondent prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition. He averred:

**“However, it is further averred that the persons employed later than applicant are still on the service of respondent. The name of such persons are as under: (1) Dharmender son of Chamaru (2) Suresh Kumar son of Baldev and (3) Bhanu son of Barfi etc. ....”**

5. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the action of termination of petitioner by respondent by giving breaks without complying the provisions of Industrial Disputes Act, 1947 is legal and justified? . . .OPP
2. Whether there is violation of provisions of Section 25-F and 25-G of Industrial Disputes Act, 1947? . . .OPP
3. If Issue No.1 is not proved, to what releif of service benefits, the petitioner is entitled to? . . .OPP
4. Whether the petition is not maintainable as alleged in preliminary objection No.1 ? . . .OPR
5. Relief.

6. The petitioner.s allegation that the respondent had given intermittent breaks in his service, did not find favour with this Court. Also, his allegation that termination of his service by the respondent was violative of the provisions of the Act, did not commend itself to this Court. His claim encompassed in issue 2 was also found untenable and the petition was therefore dismissed, vide award dated January 3, 2006. Aggrieved, the petitioner laid challenge to the award before the Hon.ble High Court of Himachal Pradesh by preferring a Civil Writ Petition titled Hoshiara Ram Vs. State of H.P. and Anr. (CWP No.1274/2006). The Hon.ble High Court by its judgment dated July 26, 2007 upheld the impugned award to the extent the same relates to the finding that the petitioner had not completed 240 days during the period of 12 calendar months preceding the date of his removal from service. This Court.s findings that there was no violation of the provisions of Section 25-G of the Act were, however, found unsustainable and were therefore set aside. The Hon.ble High Court therefore allowed the writ petition partly and remanded the matter to this Court with a direction to decide the issue: “Whether the workman is entitled to the protection of Section 25-G of the Act or not in view of the material placed before it by the parties afresh.” For the reasons to be recorded hereinafter, my findings on this issue are that in terminating the services of the petitioner, the respondent had violated the provisions of Section 25-G of the Act.

#### REASONS FOR FINDINGS

7. The petitioner who was undeniably engaged by the respondent as daily waged beldar in HPPWD, Salooni Sub Division on November 7, 1995, alleged that his services were terminated by the respondent orally on December 1, 1998. Refuting this allegation, the respondent, on the other hand, averred that the petitioner, who was a habitual absentee, had abandoned the job on his own. But his claim of the respondent, to my thinking, cannot be taken

without a pinch of salt in view of the materials on record. The respondent in his reply averred that "he (petitioner) remained on roll of the respondent department upto 3/2001 and thereafter did not turn up till date". As against this averment, the respondent's witness P.C. Malhotra, then Assistant Engineer, EE Salooni, however, maintained as RW1 that the petitioner had left his job after January, 2001. The respondent's pleadings thus being at variance with the evidence led by him cannot be said to have been established. More so, in view of his failure to adduce in evidence such document(s) as may lend assurance to his claim that the petitioner had abandoned the job on his own after March, 2001. The petitioner in his statement as PW1 maintained that he was engaged by the respondent as daily waged beldar in November, 1995 and worked as such upto 1.12.1998 when his services were dispensed with by the respondent without any notice and payment of retrenchment compensation. There being no reason to discredit this deposition, I have no hesitation to holding that the services of the petitioner were terminated by the respondent on December 1, 1998.

8. Now the question: Whether or not the respondent had retained any workman junior to the petitioner at the time his services were dispensed with on December 1, 1998. The answer to this is in the affirmative in view of the petitioner's deposition and the seniority list Ex. PB. The petitioner in his statement as PW1 maintained that Suresh Kumar, Dharamender, Bhanu and others, who were junior to him, were still in the employ of the respondent. This deposition of his having not been challenged during his cross-examination by the respondent deserves acceptance. More so, in view of the seniority list Ex. PB, which is demonstrative of at least two workmen namely Dharmender and Suresh Kumar, whose names figure at serial nos. 2 and 10 respectively in the seniority list pertaining to Salooni Division, being junior to the petitioner and their having been retained in service even after termination of the petitioner's services. Section 25-G of the Act reads:

**"25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

9. Since the respondent is proved to have retained the aforementioned workmen, who were junior to the petitioner, at the time the latter's services were terminated, the respondent can safely be held to have violated the provisions of Section 25-G of the Act. The issue on hand is therefore held in favour of the petitioner and against the respondent.

#### RELIEF

10. In view of the earlier award dated January 3, 2006 of this Court having been partly upheld by the Hon.ble High Court by its judgment dated July 26, 2007 in CWP No.1274/2006 and what has been held by me on the issue aforementioned, the claim petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is held entitled to 50% back-wages and continuity of service from the date of his unlawful retrenchment. The reason why he is held entitled to 50% back-wages is non-existence of such evidence as may show that he was not a gainfully employed after his retrenchment. The respondent is directed to re-engage him within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 2nd day of December, 2008.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 497/2004

Date of Institution : 6.11.2004

Date of decision : 20.12.2008

Shri Ishwar Singh S/o Shri Kanshi Ram, Village Dohru, P.O. Dadhol, Tehsil Ghumarwin, District Bilaspur,  
H.P.

. .Petitioner

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Ghumarwin, Distt. Bilaspur, H.P.

. .Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, Vice AR.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of service of Shri Ishwar Singh S/o Shri Kanshi Ram, workman by the Executive Engineer, H.P.P.W.D., Division, Ghumarwin, District Bilaspur, H.P. w.e.f. 11.10.2001 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained by the department is proper and justified? If not, what relief of service benefits the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on June 17, 1997, and that he worked as such upto October 11, 2001 when his services were dispensed with by the respondent orally. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner averred that in dispensing with his services, the respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short), because no notice was given to him nor was he paid retrenchment compensation. Besides, the respondent violated the principle of „last come first go. as envisaged under Section 25-G of the Act, because certain workmen junior to him were retained at the time of termination of his services. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. Admitting the petitioner.s claim of having been engaged as daily waged Beldar on June 17, 1997, the respondent in his reply averred that he was engaged only for a short period of 100 days under the Employment Assurance Scheme, and that his services were later dispensed with. Aggrieved, the petitioner filed before the H.P. Administrative Tribunal an application. Claiming to have re-engaged the petitioner on the basis of the order dated September 27, 2000 passed by the said Tribunal, the respondent averred that he (petitioner) had worked for 284 days in 2001. On October 11, 2001, the petitioner.s services, according to the respondent, were dispensed with on the basis of the orders dated August 20, 2001 passed by the Hon.ble High Court of Himachal Pradesh in a Civil Writ Petition preferred by the respondent against the aforementioned order of the H.P. Administrative Tribunal. Claiming to have rightly dispensed with the services of the petitioner, the respondent averred that the claim petition was not maintainable.

4. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 11.10.2001 without complying with the provisions of the Industrial Disputes Act, 1947 and retaining the Juniors of the petitioner, in violation of section 25-G of the I.D. Act, is illegal & Unjustified, as alleged?  
..OPP
2. If issue No. 1 is to proved in the affirmative, what service benefits the petitioner is entitled to?  
..OPP
3. Whether the petition is not maintainable?  
..OPR
4. Whether the Labour Court has no jurisdiction, as alleged?  
..OPR



5. Whether the petitioner was employed as daily wager under (EAS) Employment Assurance Scheme for 100 days, if so its effect?
6. Relief.

. .OPR

5. My Ld. Predecessor-in-office held the reference to be bad and not maintainable, vide award dated January 17, 2006. Aggrieved, the petitioner laid challenge to the said award by preferring before the Hon.ble High Court of Himachal Pradesh a Writ Petition (CWP No.1291/2006). By its judgment dated July 31, 2008, the Hon.ble High Court set aside the impugned award and remanded the matter to this Court for decision afresh in accordance with law.

6. For the reasons to be recorded hereinafter, my findings on the issues aforementioned as under:

- Issue 1 : Yes
- Issue 2 : He is entitled to reinstatement, 50% back-wages and continuity of service from the date of his retrenchment.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Issue 6 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

#### ISSUES 1 AND 5

7. Both these issues being inter-linked are taken up together.

8. The respondent.s claim of having engaged the petitioner as daily waged Beldar only for 100 days under the Employment Assurance Scheme of the Government, to my thinking, does not appear to be ring having a of truth in view of the mandays chart (Annexure R-III), which is demonstrative of the petitioner having worked for 158 days during the year 1997 and 137 days in 1998. Had the respondent.s claim of having engaged the petitioner only for 100 days under the aforesaid scheme been true, the petitioner would have not been allowed to work beyond 100 days from the date of his employment (June 17, 1997). I am therefore not disposed to accept the said claim of the respondent. Issue 5 is therefore held against the respondent and in favour of the petitioner.

9. Although nowhere in his pleadings did the respondent claim to have dispensed with the services of the petitioner before October 11, 2001, the mandays chart (Annexure R-III) is indicative of the respondent having terminated the services of the petitioner in or about July, 1998 and re-engaged him in October, 2000 on the basis of the order dated September 27, 2000 of the H.P. Administrative Tribunal. Aggrieved by the said Tribunal.s orders, the respondent, it appears, laid challenge thereto by preferring before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No. 671/2001). By its order dated August 20, 2001, the Hon.ble High Court made the following orders:

**“Notice returnable after six weeks. Meanwhile, order passed by the Tribunal is stayed.”**

10. On the basis of this order, the Assistant Engineer, H.P.P.W.D. Sub Division, Bharari by his letter dated October 10, 2001 terminated the services of the petitioner with immediate effect. The relevant portion of the said letter may be reproduced with advantage:

**“In compliance to the order dated 27.9.2001 passed by the Hon.ble HP Administrative Tribunal you were re-employed by this department on M/Roll basis w.e.f. 17.10.2000 and lateron the department has filed an application before the Hon.ble HP High Court agaisnt the above said order. According the Hon.ble H.P. High Court stayed the order passed by the Hon.ble Tribunal. Meanwhile on dated 26.8.2001(photo copy attached). In compliance to the order passed by the Hon.ble High Court on dated 26.8.2001 yours services is hereby terminated with immediate effect till further orders.”**

11. The order dated July 31, 2008 passed by the Hon.ble High Court of Himachal Pradesh in the Civil Writ Petition 1291/2006 would reveal that the respondent.s Civil Writ Petition (CWP No.671/2001) laying challenge to the H.P. Administrative Tribunal.s orders dated September 27, 2000 was allowed by the Hon.ble High Court by its judgment dated April 17, 2002. But the setting aside by the Hon.ble High Court of H.P. of the H.P. Administrative Tribunal.s orders dated September 27, 2000 on the basis of which the petitioner was re-engaged by the respondent in October, 2000, notwithstanding, the fact remains that the petitioner, who was re-engaged by the respondent in October, 2000, worked in the respondent.s department until his services were dispensed with on October 11, 2001. The mandays

chart is demonstrative of his having worked for more than 240 days during the period of 12 calendar months before the date of his retrenchment (October 11, 2001) . Section 25-F of the Act reads:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

12. Admittedly in the respondent.s witness Karamjeet Singh.s cross-examination as RW1, no notice was given to the petitioner nor was he paid any retrenchment compensation on or before the date of termination of his services. In dispensing with the services of the petitioner, the respondent therefore violated the abovementioned provisions of Section 25-F of the Act. But not only did the respondent violate the provisions of Section 25-F of the Act, he also violated the provisions of Section 25-G of the Act, which provides:

**“25-G. Procedure for retrenchment. –** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

13. The petitioner in his statement as PW1 maintained that the workers namely Jitender, Chain Singh, Raghunath, Om Prakash, Rakesh Kumar, Ramesh Chand, Thakur Dass, Baliram, Data Ram, Surinder, Bhagwan Dass, Subhash Chand, Bidi Chand, Anand Kumar and Sarju Ram, who were junior to him, were retained in service by the respondent. This deposition having not been challenged during his cross-examination by the respondent deserves acceptance. The respondent.s witness Karamjeet Singh maintained in his cross-examination as RW1 that the workmen, who were junior to the petitioner, were retained in service on the basis of the orders of the Hon.ble Court. But in substantiation of this claim, the respondent did not choose to bring on record such orders of the Court as may show that the workmen junior to the petitioner were retained in service on the basis thereof. The respondent having undeniably retained in service certain workmen, who were junior to the petitioner, at the time his services were dispensed with, the abovementioned provisions of Section 25-G of the Act are proved to have been violated.

14. The upshot is that in dispensing with the services of the petitioner, the respondent violated the provisions of Sections 25-F and 25-G of the Act. The issue 1 is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 2

15. In view of my findings under the forging issues, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. He is also entitled to continuity of service from the date of termination of his services (October 11, 2001). Besides, he is entitled to 50% back-wages in view of the facts and circumstances of the case. The issue under discussion is held accordingly.

## ISSUE 3

16. In view of what has been held under the above issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is held accordingly.

## ISSUE 4

17. In view of the industrial dispute raised by the petitioner, the jurisdiction of this Court to adjudicate upon the same is not excluded. The respondent.s counsel has not been able to show how the jurisdiction of this Court to adjudicate upon the reference on hand stands ousted. The issue under discussion is therefore held in favour of the petitioner and against the respondent.

## RELIEF

18. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is held entitled to 50% back-wages and continuity of service from the date of his unlawful retrenchment (October 11, 2001). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette. The file after completion be consigned to the record room.

Announced in the open Court today this 20th day of December, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 476/2004  
Date of Institution : 23.9.2004  
Date of decision : 20.12.2008

Shri Jagat Pal S/o Shri Munshi Ram, VPO, Dakhot, Tehsil Ghumarwin, Distt. Bilaspur, H.P.

. .Petitioner

Versus

The Executive Engineer, H.P.P.W.D., Division, Ghumarwin, Distt. Bilaspur, H.P.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, Vice AR.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of service of Shri Jagat Pal S/o Sh. Munshi Ram, workman by the Executive Engineer, H.P.P.W.D., Division, Ghumarwin, District Bilaspur, H.P. w.e.f. July, 1998 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained by the department is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in H.P.P.W.D. Sub Division, Bharari, in April, 1997, and that his services were orally terminated by the respondent in November, 1998. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of termination of his services, the petitioner averred that as he is never absented from work, his removal from service was unlawful. In dispensing with his services, the respondent, according to the petitioner, violated the relevant provisions of the Industrial Disputes Act, 1947 (the Act, for short), because certain workmen namely Jaisi Ram, Nikki Devi, Raj Kumar, Anil Kumar and Raghu Nath, who were junior to him, were retained in service at the time of his unlawful retrenchment. The petitioner therefore prayed for a direction to the respondent to reinstate him with all consequential service benefits. 3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar in April, 1997, but refuted his claim of having worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. Claiming the petitioner to have been engaged as unskilled labourer only for 100 days under the Employment Assurance Scheme, the respondent averred that in view of the petitioner having been engaged for a specific period of time, there was no question of his having completed 240 days as claimed by him. As for the petitioner's allegation that the workmen namely Jaisi Ram, Nikki Devi, Raj Kumar, Anil Kumar and Raghu Nath, who were junior to him, were retained in

service at the time of his retrenchment, the respondent's contention is that the services of these workmen were also terminated, and that they having been re-engaged in compliance with the orders of the H.P. Administrative Tribunal, no provisions of the Act can be said to have been violated.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

15. Whether the disengagement of the petitioner by the respondent is legally justified or not? . . .OPP
16. If the above issue no.1 is proved in the affirmative, what relief the petitioner is entitled to? . . .OPP
17. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | No   |
| Issue 2 : | Yes. He is entitled to the relief as mentioned under this issue. |
| Issue 3 : | The petition allowed partly per operative part of the award.     |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The respondent's claim that the petitioner was engaged as daily waged Beldar just for 100 days under the Employment Assurance Scheme of the Government, to my thinking, does not appear to be tenable in view of the respondent's witness Raj Kumar Sood's affidavit Ex. RW1/A, which is indicative of the petitioner having worked for 169 days in 1997 and 137 days in 1998. The mandays chart (Annexure R-2) produced by the respondent is also demonstrative of the petitioner having worked for 169 days during the year 1997 and 137 days in 1998. Had the respondent's claim of having engaged the petitioner for a limited period of 100 days under the scheme aforementioned been true the petitioner would have not been allowed to work beyond the said period of time. As the respondent on his own showing established it in record that the petitioner had worked for more than 100 days in 1997 as also in 1998, his claim that the petitioner was engaged just for 100 days under the Employment Assurance Scheme stands belied and cannot therefore be accepted.

8. But the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment also does not ring true, because the mandays chart (Annexure R-2) the correctness of which is not been disputed by him, does not lend assurance to his claim. The petitioner having thus not been proved to have been in „continuous service for a period of one year. as defined under Section 25-B of the Act, the respondent cannot be said to have violated the provisions of Section 25-F of the Act, which reads:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. Now the question: „Whether or not the respondent is proved to have violated the provisions of Section 25-G of the Act. The answer, to my thinking, is in the affirmative in view of the materials of the record. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

10. The petitioner in his statement of claim alleged that his services were terminated by the respondent in November, 1998. But this averment, to my mind, appears to be far from truth in view of the reference on hand, wherein his services are alleged to have been terminated w.e.f. July, 1998. The mandays chart is also indicative of the petitioner having worked upto July, 1998. So, not in November, 1998, but it was in July, 1998 when his services were terminated.

11. The petitioner in his statement of claim averred that certain workmen namely Jaisi Ram, Nikki Devi, Raj Kumar, Anil Kumar and Raghu Nath, who were junior to him, were retained in service at the time his services were dispensed with by the respondent. This averment to the extent the same relates to the said workmen being junior to the petitioner, is not disputed in the respondent's reply. What is contended by the respondent is that the said workmen having been engaged in compliance with the orders of the H.P. Administrative Tribunal, no provision of the Act can be said to have been violated. I am not impressed with this contention. Of the aforesaid five workmen (Jaisi Ram, Nikki Devi, Raghu Nath, Raj Kumar and Anil Kumar), the latter two appear to have been retrenched by the respondent in October 1998, vide orders dated August 30, 1999 (Annexure R-5) and September 6, 1999 (Annexure R-6) of the H.P. Administrative Tribunal, Shimla. Of the remaining three workmen, while Raghu Nath appears to have been retrenched in the same month as the petitioner, vide order dated November 3, 1999 of the said Tribunal (Annexure R-7), the point of time when the services of Jaisi Ram, Nikki Devi were terminated is not known. So, what stands established on record is that Raj Kumar and Anil Kumar, who were undeniably junior to the petitioner, were retained in service when the services of the petitioner were dispensed with in July, 1998. In terminating the services of the petitioner, the respondent is therefore proved to have violated the provisions of Section 25-G of the Act. The termination of services of the petitioner thus not being legally justified, the issue under discussion is held in his favour and against the respondent.

## ISSUE 2

12. In view of my findings on the foregoing issue, the petitioner is entitled to re-instatement in the same capacity as in which he was working at the time of termination of his services in July 1998. Besides, he is entitled to continuity of service from the date of his retrenchment (July, 1998). He is, however, held not entitled to back-wages, because his pleadings as also the evidence led by him are non-existent in averments as may show that he was not gainfully employed or working for gain after his retrenchment. The issue under discussion is held accordingly.

## RELIEF

13. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services (July 1998). Besides, he is held entitled to continuity of service from the date of his retrenchment. He is, however, held not entitled to any back-wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette. The file after completion be consigned to the record room.

Announced in the open Court today this 20th day of December, 2008.

By order,  
S.S.SEN,  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 160/2007  
Date of Institution : 1.11.2007  
Date of decision : 24.11.2008

Shri Jagdish Chand S/o Shri Govind Ram, Village & P.O. Saigloo, Tehsil Sadar, Distrcit Mandi, H.P.

. .Petitioner.

Versus

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.

. Respondent.

For the Petitioner :

Sh. N.L. Kaundal, vice AR

For the Respondent :

Sh. Gaurav Sharma, vice Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Shri Jagdish Chand S/o Shri Govind Ram workman by the Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 1.1.2000 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him were retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on January, 1999, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto December 31, 1999. On January 1, 2000, his services were terminated by the respondent by serving with him a notice dated December 20, 1999. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting for a call till February, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on January, 1999, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on June 25, 1998, and that he had worked upto December 31, 1999 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shiv Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? OPP
2. Whether the petition suffers from the vice of delay and laches. OPR
3. Whether the petitioner is estopped from filing the present petition by his act and conduct. OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 2 : No  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

7. Disputing the petitioner's claim of having been engaged on January, 1999, the respondent averred that he (petitioner) was engaged as daily waged beldar on June 25, 1998, and that he had worked as such upto December 31, 1999. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”

11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

“1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman

so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of „retrenchment.

2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent.s contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-



- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

16. However, the petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner.s contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

**“As per the record, Jagdish Chand (petitioner) was engaged on 25.6.1998 and he worked upto 31.12.1999. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chand Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working.....”**

18. The respondent.s aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (25.6.1998). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

**“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”**

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

### ISSUE 3

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

### RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as daily waged beldar (25.6.1998). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstate him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (1.1.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref No. : 107/2006  
Date of Institution : 30.8.2006  
Date of decision : 21.1.2009

Shri Jagdish Kumar S/o Shri Ganga Ram Village Bhaur, P.O. Kanaid, Tehsil Sunder Nagar, District Mandi,  
H.P.

. .Petitioner.

*Versus*

1. The Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P.
2. The Technical Officer (Tassar) Sericulture Division, Mandi, H.P

. Respondents.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. L.B. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the action of the (1) Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P. (2) The Technical Officer (Tassar) Sericulture Division, Mandi, H.P. to give break in service to Shri Jagdish Kumar S/o Shri Ganga Ram workman during his service period time and again and finally terminated w.e.f. 09.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondents as daily waged Beldar on September 28, 1994, and that he worked as such upto July 20, 2004. Thereafter the respondents suddenly terminated his services orally without giving him an opportunity of being heard. Claiming to have worked for 240 days in each calendar year, the petitioner alleged that the respondents, who had been giving fictional breaks in his service, never allowed him to complete 240 days in any calendar year, and that he having not been served with any notice before termination of his services, the respondent had violated the provisions of Section 25-F of the Act, 1947 (the Act, for short). The respondents, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time of his retrenchment. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act. The petitioner therefore prayed for a direction to the respondents to re-engage him in the same capacity as in which he was working at the time of termination of his services. He also prayed for a direction to the respondents to pay him full back-wages and count the “intervening period between re-engagement and dis-engagement” towards his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on September 28, 1994, but refuted his allegation of fictional breaks in his service. The petitioner.s allegation that his services were terminated on July 20, 1994, was also repudiated by the respondents. Claiming the petitioner to have been engaged as against a seasonal work, which was purely of temporary nature, the respondents averred that he had worked only for 56 days in 1994 and thereafter never completed 240 days in any year, and that he did not turn up after July, 2004. Refuting the petitioner.s allegation that certain workers junior to him were retained and working in the department, the respondents averred that “no junior person to the applicant has ever been engaged or allowed to be continued by the respondents, as alleged rather all those who are working in the unit are seniors to the applicant.” On the basis of these averments, the respondents prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. Claiming to have worked for 56 days in 1994, the petitioner alleged that the mandays chart prepared by the respondents was wrong, and that certain workers junior to him were still working in the respondents. department.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

18. Whether affording to breaks in service of the petitioner by the respondent and ultimately terminating him is legal and justified?  
..OPP
19. If the above issue is proved in the affirmative, what relief the claimant is entitled to?  
..OPR
20. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No  
Issue 2 : Yes. He is entitled to the relief as mentioned under this issue.  
Relief : The claim petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

7. The respondents claim in their joint reply that the petitioner was engaged as against a seasonal work, which was purely of a temporary nature, to my thinking, does not appear to be having a ring of truth in view of the materials on record. Nowhere in his affidavit Ex. RW1/A or cross-examination as RW1 did the respondents witness Piar Singh, Technical Officer (Tassar) Sericulture Department, Mandi, maintain that the petitioner was engaged as against a seasonal work. Also, the mandays chart produced by the respondents is not indicative of the petitioner having been engaged as against a seasonal work. The respondents claim that the petitioner was engaged as against a seasonal work cannot therefore be taken without a pinch of salt.

8. But the petitioner's allegation that the respondents had been giving fictional breaks in his service, also, to my mind, does not ring true for want of plausible evidence. He in his affidavit Ex. PW1/A inter alia deposed: "Moreover the respondent No.3 willfully and intentionally did not allow the applicant to complete 240 days initially upto 1997 after that applicant has completed 240 days, but the mandays chart has been prepared arbitrarily as no month wise mandays chart has been given as applicant has worked for whole of the year so the termination order is void, abinitio....."

9. This deposition, to my mind, appears to be far from truth, for the mandays chart is indicative of his having worked for 56, 114, 95, 165, 156, 195, 168, 186, 207, 168 and 75 days during the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively.

10. The petitioner's allegation that this document has been prepared arbitrarily, and that the respondent 3 (respondent 2 in the reference) had not allowed him to complete 240 days in any calendar year cannot be accepted, because no such suggestion was put to the latter during his cross-examination RW1 as may show that he had prepared the mandays chart arbitrarily and not allowed the petitioner to complete 240 days in any calendar year. The allegation of fictional breaks cannot therefore be said to have been substantiated. The issue under discussion is accordingly held in the negative.

## ISSUE 2

11. The petitioner in his affidavit Ex. PW1/A deposed that he had worked upto July 20, 2004 when all of a sudden his services were orally terminated by the respondents. This deposition of his having not specifically been challenged during his cross-examination by the respondents deserves acceptance and is accepted. The respondents claim in their joint reply that the petitioner had abandoned the job after July, 2004, is therefore nothing but falsity. More so, when they did not choose to adduce in evidence any such muster roll or other document as may show the petitioner to have absented from work or abandoned the job after July, 2004.

12. The petitioner's allegation that in terminating his services, the respondents had violated the provisions of Section 25-F of the Act, to my mind, does not appear to be tenable, because the materials on record are demonstrative of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment.

12. However, in terminating the services of the petitioner, the respondents appear to have violated the provisions of Section 25-G of the Act, which reads:

**"25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

13. The petitioner in his affidavit Ex. PW1/A deposed that the workmen namely Goverdhan Singh, Bimla Devi, Uttam Chand, Mahant Ram, Nilima, Hans Raj and Rattan, who were junior to him, were still working at Pandoh, Nagwain, Mumail, Mohin and Mandi. This claim of the petitioner having not specifically been disputed during his cross-examination by the respondents appears to be true. More so, when the seniority list marked A adduced in evidence by the respondents is also indicative of the said workmen being junior to the petitioner and their having been retained in service at the time of termination of his services. The respondents are therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. In view of the respondents having been found to have violated the provisions of Section 25-G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment (July 20, 2004). However, he is held not entitled to back-wages, because his pleadings as also the evidence led by him are non-existent in such averments as may show that he was not gainfully employed after his retrenchment. The issue under discussion is held accordingly.

## RELIEF

14. Judged in the light of my findings on the issues above, particularly issues 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services (July 20, 2004). Besides, he is held entitled to continuity of service from the date of his retrenchment. He is, however, held not entitled to any back-wages. The respondents are directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 176/2006  
Date of Institution : 4.12.2006  
Date of decision : 28.2.2009

Shri Jai Lal S/o Shri Gauri Dutt Village Bari, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P.

. .Petitioner.

*Versus*

The Divisional Forest Officer, Suket Forest Division, Sunder Nagar, Distt. Mandi, H.P.

. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. L.B. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Jai Lal S/o Shri Gauri Dutt workman by the Divisional Forest Officer, Suket Forest Division Sunder Nagar, District Mandi, H.P. w.e.f. 1.4.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in Kangoo Range of Sundernagar Forest Division in June, 2002 and worked as such upto April 1, 2003 when his services were orally terminated by the respondent. Alleging the respondent to have given fictional breaks in his service and not allowed him to complete 240 days in any calendar year, the petitioner further averred that he had otherwise completed 240 days in each calendar year, and that the respondent's action was highly illegal and unlawful. In terminating his services, the respondent violated not only the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) but also violated the provisions of Section 25-G of the Act, because certain workers, who were junior to him, were retained in service at the time his services were dispensed with. Claiming to have requested the respondent to re-engage him, the petitioner further averred that after his requests fell on a deaf ear he raised an industrial dispute, which is encompassed in the reference in question. He prays for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were terminated. He also prays for the grant of full back-wages and other consequential service benefits including seniority etc.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division in June, 2002. The petitioner's claim of having worked as labourer in the said Forest Range upto April 1, 2003, is also admitted by the respondent. The respondent, however, denied having dis-engaged the petitioner and alleged that he had not turned up after 2003. It is also averred that "The work on which the applicant was engaged was of a seasonal nature and when the works were over, the applicant was given break". Refuting the petitioner's allegation of fictional breaks, the respondent further averred that the petitioner "at his own sweet will did not turn up on work", and that he being a casual worker, his continuity in service depended upon the availability of work and funds. As to the petitioner's allegation that at the time his services were dispensed with certain workers junior to him were retained in service, the respondent's reply is that no workmen junior to the petitioner was allowed to continue nor was any new person engaged as daily wager. On the basis of these averments, the respondent prayed for dismissal of the reference.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the dis-engagement from the service of the petitioner by the respondent is proper and justified? . . .OPP
2. If the above issue is proved in the affirmative, what relief of service benefits the petitioner is entitled to? . . .OPP
3. Whether the petition is not maintainable before this Court? . . .OPR
4. Relief. . .OPR

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | No   |
| Issue 2 : | He is entitled to reinstatement, continuity of service and 50% back-wages from the date of his retrenchment. |
| Issue 3 : | No   |
| Issue 4 : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division in June, 2002 and worked upto April 1, 2003 is not disputed by the respondent. What is disputed by the respondent is his claim of having been retrenched on April 1, 2003. The petitioner, according to the respondent, had abandoned the job on his own, and no provision of the Act can therefore be said to have been violated. But this contention of the respondent, to my mind, does not appear to be tenable in view of the materials on record. Nowhere in his pleadings did the respondent allege that the petitioner had abandoned the job on his own on April 1, 2003. What is inter alia averred by him in his reply is:

**".....In fact, the applicant was not dis-engaged by the department, but he at this belated stage can not take advantage through this Hon.ble Tribunal-cum-Court of his own wrongs. .... It is also submitted that the applicant was a casual worker and his continuity in work depended upon the availability of work and funds. ....It is also denied that the respondents gave any fictional breaks in the service. When the applicant at his own sweet will did not turn up on work and the application on this score is also liable to be dismissed....."**

8. In paragraph 1 of his reply to the petitioner's statement of claim, the respondent, however, inter alia averred that "the work on which the applicant was engaged was of a seasonal nature and when the works were over, the applicant was given break". This averment not being consistent with the afore-reproduced averments of the respondent, the latter's claim that the services of the petitioner were never terminated but he had abandoned the job on his own, cannot be taken without a pinch of salt. More so, in view of the evidence led by the petitioner, which is demonstrative of his services having been terminated by the respondent on April 1, 2003, and the latter's failure to adduce in evidence such documents as may lend assurance to his claim that the petitioner had abandoned the job on April 1, 2003. The respondent to establish his claim ought to have brought on record atleast the muster roll for the month of April, 2001

wherein the petitioner may have been shown to have absented from work w.e.f. April 1, 2003, but he (respondent) failed so to do. It is therefore difficult to accept the respondent's claim.

9. The respondent's claim that the work for which the petitioner was engaged was of a seasonal nature, and that break was given in his service on completion of the work, also, to my mind, does not ring true in view of the materials on record. No such documentary evidence has been led by the respondent as may show that the petitioner was engaged for a seasonal work. The seniority list Ex. RW1/C in respect of the daily waged workers engaged in the Forest Division in question is indicative of many of them having worked for almost whole of the year during the calendar years from 1999 to 2006. Had the respondent been true in his claim that the work in the Forest Division in question was of a seasonal nature, many of the workmen named in the said seniority list would not have been shown to have worked almost whole of the year during the said period. I am therefore not disposed to accept the respondent's claim that the petitioner was engaged for a seasonal forestry work, and that his services were dispensed with on completion of the work.

10. The upshot therefore is that the respondent's claim that the petitioner was engaged for a seasonal forestry work, and that his services were dispensed with on completion of the work, is far from truth. Also, the respondent's claim that the petitioner had abandoned the job on his own, is nothing but falsity. The respondent is proved to have terminated the services of the petitioner w.e.f. April 1, 2003.

11. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

“25F. Conditions precedent to retrenchment of workmen- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days' average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

12. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

- (a) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (b) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-
- (c) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (d) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-

- (i) ninety-five days, in the case of workman employed below ground in a mine; and
- (ii) one hundred and twenty days, in any other case....”

13. The petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed more than 240 days during the period of 12 calendar months preceding the date of his removal from service finds assurance from the mandays chart Ex. RW1/B adduced in evidence by the respondent. There is nothing to suggest that the respondent had at the time of termination of the services of the petitioner given him one month.s notice or paid him wages in lieu of such a notice, along with retrenchment compensation as envisaged under Section 25-F of the Act. In terminating the services of the petitioner, the respondent therefore violated the said provisions of the Act.

14. However, the petitioner.s allegation that in terminating his services, the respondent violated the provisions of Section 25-G of the Act as well, to my thinking, does not appear to have been substantiated. The said Section of the Act provides:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

15. Nowhere in his pleadings or evidence did the petitioner name the workmen who were allegedly junior to him and retained in service by the respondent at the time of termination of his services. The seniority list Ex. RW1/C the correctness which is not disputed by the petitioner, also does not lend credence to the petitioner.s allegation that the respondent had at the time of termination of his services retained in service certain workmen who were junior to him (petitioner). The respondent is therefore not proved to have violated the abovementioned provisions of Section 25-G of the Act.

16. Since the respondent is proved to have violated the provisions of Section 25-F of the Act in terminating the services of the petitioner, the latter.s dis-engagement from service on April, 2003 was not justified. The issue under discussion is therefore held in favour of the petitioner and against the respondent.

## ISSUE 2

17. In view of the facts and circumstances of the case and what has been held under the foregoing issue, the petitioner, to my thinking, is entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (April 1, 2003). The issue on hand is held accordingly.

## ISSUE 3

18. view of what has been held under the above issues 1 and 2, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## RELIEF

19. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is held entitled to continuity of service and 50% back-wages from the date of his unlawful retrenchment (April 1, 2003). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.



IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 1/2008

Date of Institution : 17.1.2008

Date of decision : 26.11.2008

Shri Jasbir Singh S/o Shri Prakash Chand, R/o Village Saroon, P.O. Jhanyari, Tehsil and District, Hamirpur, H.P.

. .Petitioner.

*Versus*

1. Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P.
2. The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P.

. .Respondents.

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Dy.D.A.

AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether the action of the (1) Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. (2) The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. to retain junior workers who are junior to Shri Jasbir Singh S/o Shri Prakash Chand workman and to give him break in service as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged beldar by the respondent 1 on September, 1999 and posted to Herbal Garden, Neri in Hamirpur district. Claiming to have been working at the said place ever since his engagement as daily waged beldar, the petitioner alleged that the respondents 1 and 2 had been giving fictional breaks in his service so that he could not be able to complete 240 days in any of the calendar years. His co-workmen namely Pawan Kumar, Ravinder Kumar, Desh Raj, Chaman Lal, Vijay Kumar, Ramesh Chand and Milap Chand, who were also working at Herbal Garden, Neri as daily waged beldar, were also given fictional breaks except one Satish Kumar, who was also engaged as daily wagger by the respondent 1 and working in the said garden. In the case of Satish Kumar, no fictional break, according to the petitioner, was ever given and the respondents. act of giving fictional breaks in the petitioner.s service and that of his aforementioned co-workers is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act, for short). Some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who according to the petitioner were also engaged on daily wages basis in another herbal garden of Ayurveda department namely Herbal Garden, Joginder Nagar in Mandi district, were also being given fictional breaks in their service. In their case, the Incharge, Herbal Garden, Joginder Nagar, was, however, forbidden from giving fictional breaks by the Director of Ayurveda, vide his letter dated July 18, 1999. Claiming the fictional breaks in his case to be the intentional act of the respondents, the petitioner further averred that he having never absented from work wilfully was entitled to continuity of service in view of the provisions of Section 25-B of the Act. Besides, he is entitled to wages for the period of fictional breaks. He therefore prays for a direction to the respondents to count the period of fictional breaks towards continuity of his service and pay him wages for the said period along with interest @ 9% per annum. He also prays for a direction to the respondents to regularise his service on the basis of his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged beldar at Herbal Garden, Neri on September 7, 1998, but refuted his allegation of fictional breaks. Claiming the work of Herbal Garden, Neri to be a seasonal work, the respondents averred that the petitioner and other workers namely Chaman Lal, Vijay Kumar, Ramesh Chand, Baljit Singh, Pawan Kumar, Desh Raj, Ravinder Kumar, Chander Kant, Ravinder Kumar and Madan Lal were engaged on daily wages basis at the said garden subject to availability of work and budget, and no fictional break was ever given in their service. As for Satish Kumar, he was in fact engaged as daily waged worker at Herbal Garden, Joginder Nagar on 1.7.1996 and he being deft in nursery development work was temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the said work and other related works there. About four years later he was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden,

Neri gained knowledge of nursery development work upto the desired level. On the basis of these averments the respondents pray for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondents have been giving fictional breaks in the service of the petitioner. . .OPP
2. Whether Satish Kumar junior to the petitioner, as alleged. . .OPP
3. If the above issues 1 and 2 are proved, what relief of service benefits the petitioner is entitled to? . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes partly, as the respondents have been giving breaks in the service of the petitioner.  
 Issue 2 : No  
 Issue 3 : The petitioner is entitled to the relief as mentioned in the operative part of the award.  
 Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The petitioner's claim of having been engaged as daily waged Beldar at Herbal Garden, Neri on September, 1999, is not disputed by the respondents. Also, his claim that he was still working as beldar on daily wages basis at the said garden, is not denied by the respondents. What is denied by the respondents is his allegation of fictional breaks. But this denial of theirs appears to be far from truth in view of the materials on record. The Mandays Chart of casual labourers working in Herbal Garden, Neri is demonstrative of the petitioner having worked for 70 days in 1998, 146 days in 1999, 179 days in 2000, 186 days in 2001, 213.5 days in 2002, 184.5 days in 2003, 195 days in 2004, 229 days in 2005, 330 days in 2006 297 days in 2007 and 117 days during the period from January 1, 2008 to April, 2008. That there have been breaks in his service is manifest from this document. In substantiation of his allegation that the breaks in service were notional/fictional, the petitioner swore an affidavit Ex. PW1/A wherein he alleged that the respondents had been giving notional/fictional breaks in his service during the period; January, 1999 to April, 2005. Besides, he relied upon a copy of the letter dated July 18, 1999 addressed to the Incharge, Herbal Garden, Joginder Nagar by the Director of Ayurveda, Himachal Pradesh, Annexure P1. This letter in its material part reads:

“You are hereby advised not to give any break after 89 days in future to daily paid Labourers who are engaged to work in Herbal Garden as such a notional break has been disapproved by the competent courts also.”

The petitioner's allegation is that some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were also being given fictional breaks in their service, and that the Incharge of the said Garden was forbidden from so doing by the Director of Ayurveda, vide his aforementioned letter dated July 18, 1999, Annexure P1. As to this allegation, the respondents. averments in paragraph 7 of their joint reply are:

**“That the contents of para-7 are admitted to the extent that these workers Sh. Sohan Singh, Lohli Devi, Ram Singh, Saina Devi, Puni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judhia Devi, Nirmala Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram & Kala Devi were engaged in Herbal Garden, Joginder Nagar and their notional breaks were discontinued by the order of Director Ayurveda, H.P. being senior. The office order issued by the Director Ayurveda to discontinue the breaks is not applicable to the casual labourers working in Herbal Garden Neri because they are being engaged subject to the availability of work & budget, as the work of Herbal Garden Neri is a seasonal work.”**

(emphasis supplied)

8. By these averments, what stands admitted by the respondents is that abovenamed workers, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were being given fictional/notional breaks in their service, which practice was discontinued on receipt of an office order issued by the Director Ayurveda. Why the said Director's office order to discontinue the breaks in service could not be made applicable to the casual labourers working in Herbal Garden, Neri, is averred to be their having been engaged subject to the availability of work and budget, as the work of Herbal Garden, Neri, according to the respondents, is a seasonal work. Going by this claim of the respondents, the petitioner's service, or for that matter the service of the workmen engaged in Herbal Garden, Neri used to be terminated from time to time on account of cessation of work and non-availability of budget. They used to be re-engaged on the availability of work and budget. Although there is no plausible material on record to lend assurance to the respondents' claim that the work of Herbal Garden, Neri is only seasonal, and that the petitioner and his aforementioned co-workers were engaged there as casual workers subject to the availability of work and budget, even if this claim is assumed to be true, the petitioner is entitled to the relief of continuity of service in view of the provisions of Section 25-B of the Act, which in its material part says:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.....”

9. It is manifest from these provisions that a workman is deemed to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. If to go by the respondents' stand, the breaks in the petitioner's service were caused on account of cessation of work and non-availability of funds. But the cessation of work and the non-availability of funds not been attributable to any fault on the part of the petitioner, he is to be considered in continuous service ever since his engagement as beldar on daily wages basis (September 7, 1998). The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

**ISSUE 2**

10. The petitioner's claim that Satish Kumar having been engaged by the respondents as daily waged beldar in Herbal Garden, Neri on 12.4.1996 was junior to him, to my thinking, does not appear to be having a ring of truth in view of materials on record. The respondents' averments as also the evidence led by them are indicative of Satish Kumar having been engaged as daily waged beldar in Herbal Garden, Joginder Nagar on July 1, 1996 and his having been temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the nursery development work there. According to the respondents, the reason why Satish Kumar was temporarily shifted to Herbal Garden, Neri, was his being deft in nursery development work and the casual workers engaged in Herbal Garden, Neri not being in the know of that work. About four years later, Satish Kumar called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery work upto the desired level. There being no reason to discredit this claim of the respondents, the petitioner's claim that Satish Kumar is junior to him cannot be accepted and is therefore rejected. The issue on hand is accordingly held against the petitioner and in favour of the respondents.

**ISSUE 3**

11. In view of the facts and circumstances of the case and my findings on the foregoing issues, the petitioner is entitled to only the relief of continuity of service from the date of his engagement as daily waged beldar (7.9. 1998). The issue on hand is held accordingly.

12. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to continuity of service from the date of his engagement as daily waged beldar (7.9.1998). He is, however, held not entitled to wages for the periods of break in his service. Also, his claim that certain workers junior to him were retained is rejected. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 591/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Shri Kamal Dev S/o Shri Lohku Ram, Village Jajar Kukain, P.O. Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Kamal Dev S/o Shri Lohku Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was

retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable

opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is



demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1018/2007-9308, dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this

Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 148/2007  
Date of Institution : 1.11.2007  
Date of decision : 24.11.2008

Shri Kartar Singh S/o Shri Narotam Ram, Village Chaloh, P.O. Saigloo, Tehsil Sadar, District Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.  
..Respondent.

For the Petitioner : Sh. N.L. Kaundal, vice AR  
For the Respondent : Sh. Gaurav Sharma, vice Adv.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether the termination of services of Shri Kartar Singh S/o Shri Narotam Ram workman by the Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 25.4.2000 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him were retained by the employer as

alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on September 29, 1997, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto April 24, 2000. On April 25, 2000, his services were terminated by the respondent by serving with him a notice dated February 23, 2000. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting for a call till February, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on September 29, 1997, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on September 25, 1997, and that he had worked upto April 24, 2000 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shiv Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to?  
..OPP
2. Whether the petition suffers from the vice of delay and laches.  
..OPR
3. Whether the petitioner is estopped from filing the present petition by his act and conduct.  
..OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 2 : No  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. Disputing the petitioner's claim of having been engaged on September 29, 1997, the respondent averred that he (petitioner) was engaged as daily waged beldar on September 25, 1997, and that he had worked as such upto April 24, 2000. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**

11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

“1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of retrenchment.

2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and

- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent.s contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

“25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

16. However, the petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner.s contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner's allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

**“As per the record, Kartar Singh (petitioner) was engaged on 25.9.1997 and he worked upto 24.4.2000. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chand Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working.....”**

18. The respondent's aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (25.9.1998). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

## ISSUE 2

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

**“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending**

**upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”**

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

### ISSUE 3

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

### RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as daily waged beldar (25.9.1997). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstatement him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (25.4.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 580/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Kashmir Singh S/o Shri Roop Singh, Village Saras-kana, PO Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.  
. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

### AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Kashmir Singh S/o Shri Roop Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the

provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . . . .OPR
3. Whether the petition suffers from the vice of delay and laches. . . . .OPR



4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:
- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.** -(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the

abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at

the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1047/2007-9311, dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 16, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a

period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 647/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Kashmir Singh S/o Shri Puran Chand, R/o Village Hukal, P.O. Longani, Tehsil Sarkaghat, Distt. Mandi,  
H.P.

*.Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*.Respondent.*

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For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

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“Whether retrenchment of services of Shri Kashmir Singh S/o Shri Puran Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First

Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial,

to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

"25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

"(m) "factory" means any premises including the precincts thereof-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.-(1)** No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-



(a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was

considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9318 dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated nil. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. Sen,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 177/2005  
Date of Institution : 19.11.2005  
Date of decision : 28.2.2009

Shri Kulvinder Singh S/o Shri Basant Singh, R/o House No.28/4, Near Gurdwara Road, Dharamshala, Distt. Kangra, H.P.

*. .Petitioner.*

## Versus

Executive Engineer, H.P.P.W.D. Division, Dehra, Distt. Kangra, H.P.

. Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. Dinesh Sharma, Adv.

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Kulvinder Singh S/o Shri Basant Singh workman by the Executive Engineer, H.P.P.W.D. Division, Dehra, District Kangra, H.P. w.e.f. Dec., 1985 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar/Mate by the respondent in HPPWD Sub Division, Jawalamukhi in May, 1983, and that his work and conduct being upto the mark, he never gave the respondent an occasion to complain against him. In the month of December, 1985, his services were, however, orally terminated by the respondent without any reason or rhyme. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his service, the petitioner further averred that at the time his services were dispensed with, he was told by the respondent that no vacancy of the post of Beldar/Mate was available in the Sub Division, and that he would be engaged a few days later. In view of the assurance given by the respondent, the petitioner went to the respondent.s office from time to time to get the job and he was again engaged as Beldar in August, 1986. However, a few months later his services were again terminated by the respondent. In terminating his services in December, 1985, the respondent, according to the petitioner, violated the provisions of Section 25-F of the Act (the Act, for short) because at the time his services were dispensed with no notice was given to him nor was he paid any retrenchment compensation. Besides, the respondent violated the principle of „last come first go., because certain workmen junior to him were retained in service at the time his services were terminated. He therefore prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. The respondent in his reply disputed the petitioner.s claim of having been engaged as daily waged Beldar/Mate in the month of May, 1983. The petitioner.s allegation that his services were terminated in December, 1985, is also repudiated by the respondent. It is averred that the petitioner was engaged as daily waged Beldar/Mate in the month of January, 1984 and worked as such upto October, 1984. In November, 2004, he abandoned the job on his own and did not return for duty upto December 31, 1984. He, however, joined his duty in the month of January, 1985 and worked upto November, 1985 intermittently. According to the respondent, the petitioner, who was in the habit of remaining absent from work, remained absent in the months of November and December, 1984 and June and September, 1985. In December, 1985, the petitioner abandoned the job on his own without an intimation to the respondent. In view of his habit of remaining absent from work and his having abandoned the job on his own in December, 1985, the respondent was not obliged to give him one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The respondent.s other contentions relate to limitation, suppressio veri, estoppel and the petitioner.s locus standi to file the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition. He emphatically refuted the respondent.s allegation that he had abandoned the job on his own.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the dis-engagement from service of the claimant by the respondent is proper and justified?  
..OPP
2. If the above issue is proved in the affirmative, what relief of service benefits the petitioner is entitled to?  
..OPP
3. Whether the claim petition is time barred. If so, its effect?  
..OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1	No
Issue 2	He is entitled to reinstatement. However, he is held not entitled to back-wages and continuity of service.
Issue 3	The petition suffers from the vice of delay and laches.
Issue 4	The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The petitioner's claim of having been engaged as daily waged Beldar/Mate by the respondent in May, 1983 does not ring true in view of the evidence led by the respondent. The respondent's witnesses B.S. Bhardwaj, then Executive Engineer, HPPWD Division, Dehra, and D.R. Verma, then AAE, HPPWD Sub Division, Jawalamukhi, are unanimous in stating as RW1 and RW2 respectively that the petitioner was engaged as daily waged Beldar in January, 1984. This deposition finds assurance from the mandays chart Ex. RW2/A, which is indicative of the petitioner having been engaged in January, 1984. The petitioner's claim that he was engaged in May, 1983, is therefore nothing but falsity.

8. The respondent's claim in his pleadings as also in the evidence led by him is that the petitioner, who was engaged as daily waged Beldar/Mate in January, 1984, worked upto October, 1984 and abandoned the job thereafter. He returned to work in January, 1985 and worked upto May, 1985. Thereafter he worked in the months of July, August, October and November, 1985 and abandoned the job thereafter.

9. Refuting the respondent's allegation of abandonment of job, the petitioner's counsel, on the other hand, contends that in the months of November and December, 1984 as also in the months of June and September, 1985, no muster roll was issued by the respondent in favour of his client, and that his services were ultimately terminated by the respondent in the month of December, 1985.

10. I have given my considered thought to the rival contentions raised and I understand that the materials on record are not sufficient to establish the respondent's claim that the petitioner had abandoned the job on his own in December, 1985. No doubt in the mandays chart Ex. RW2/A, the petitioner is not shown to have worked in the months of November and December, 1984 and June, September and December, 1985, but the respondent to establish his claim of abandonment of the job by the petitioner ought to have adduced in evidence atleast the muster roll for the month of December, 1985 wherein the latter may have been shown to have absented from work, but he failed so to do. It is therefore difficult to accept the respondent's claim.

11. But even if the respondent's claim as to the petitioner's alleged absence from work is assumed to be true, the plea of abandonment of job can still not be said to have been established, because absence from duty indubitably amounts to misconduct, which calls for holding of a domestic inquiry by the employer in accordance with the principles of natural justice. In D.K. Yadav Vs. JMA Industries Limited, 1993 (1) Services Law Judgments page 221, the Hon.ble Apex Court inter alia observed:

**“Even executive authorities, which taken administrative action involving any deprivation of or restriction on inherent fundamental rights of citizen, must take care to see that justice is not only done. But manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness, or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice”.**

12. The Hon.ble Supreme Court further held as under:

**“It is well settled law that right to life enshrined under Art. 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequence of jeopardizing not only his livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of a workman fair play requires that a reasonable opportunity to put forth his case is given and in case of any misconduct i.e. absence from duty or unauthorised absence from duty, domestic enquiry be conducted complying with the principle of natural justice.”**

13. In case the petitioner had absented from work, the respondent ought to have conducted a domestic inquiry in accordance with the principles of natural justice, but he failed so to do. His claim that the petitioner had abandoned the job on his own in December, 1985, therefore, deserves to be negated on this count as well.

14. The mandays chart aforementioned would show the petitioner to have worked for 302 days in 1984 and 273 days in 1985. The petitioner in his affidavit Ex. PW1/A maintained that his services were terminated by the respondent in December, 1985 without any rhyme or reason. There being no reason to discredit his deposition, I have no hesitation in holding that his services were terminated by the respondent in December, 1985.

15. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25F. Conditions precedent to retrenchment of workmen-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (i) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

16. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

(1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case;
- (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-
  - (i) ninety-five days, in the case of workman employed below ground in a mine; and one hundred and twenty days, in any other case....”

17. The mandays chart Ex. RW2/A is demonstrative of the petitioner having worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. There is nothing to suggest that the petitioner had at the time of termination of the services of the petitioner given him one month.s notice and paid retrenchment compensation as envisaged under Section 25-F of the Act. In terminating the services of the petitioner, the respondent therefore violated the said provisions. So, the termination by the respondent of the petitioner.s services in December, 1985 is not justified. The issue under discussion is therefore answered in the negative.

ISSUES 2 and 3

18. These issues being inter-linked are taken up together.

19. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Dharamshala appears to have initiated conciliation proceedings in or about 2003. On failure of the conciliation move, the Conciliation Officer referred the matter to the Labour Commissioner, HP, vide his report No. 3169 dated December 9, 2003. On the basis of the said report, the Labour Commissioner referred the dispute to this Court, under Section 10(1) of the Act, vide Notification No.11-1/85 (LAB)ID/05-KANGRA, Himachal Pradesh Government, „Labour Department. dated November 2, 2005. The petitioner, who felt aggrieved by his unlawful retrenchment in December, 1985, thus does not appear to have taken steps for the redressal of his grievance until he approached the Conciliation-cum-Labour Officer, Dharamshala in or about 2003. There being no plausible explanation for the delay of about 17 years in his raising the industrial dispute in question, his claim decidedly suffers from the vice of delay and laches. In Naginder Kumar Vs. HPSEB and anr., 2008(1) SLJ, 425, our own High Court inter alia observed:

**“.....It is also well settled by now that the Labour court cannot dismiss the claim on the ground of delay and laches once the same has been referred to it by the state Government. The Labour Court at the most can take into consideration delay, if any, in raising the dispute at the time of granting the relief.”**

20. In view of the respondent having been held to have violated the provisions of Section 25-F of the Act in terminating the services of the petitioner, the latter is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with in December, 1985. However, the petitioner, to my thinking, is not entitled to any back-wages or continuity of service in view of his claim having been found to be suffering from the vice of delay and laches. Both the issues under discussion are held accordingly.

#### RELIEF

21. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated by the respondent in December, 1985. However, he is held not entitled to any back-wages or continuity of service/seniority in view of his claim having been found to be utterly stale. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 2/2008  
Date of Institution : 17.1.2008  
Date of decision : 26.11.2008

Shri Madan Lal S/o Shri Puran Chand, R/o Village Neri, P.O. Khagga, Tehsil & District Hamirpur, H.P.

*. .Petitioner.*

*Versus*

5. Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P.

6. The Incharge, Herbal Garden, Neri, P.O. Khagga, Tehsil & District Hamirpur, H.P.

*. .Respondents.*

For the Petitioner : Sh. N.L. Kaundal, AR  
the Respondent : Sh. H.S. Dhiman, Dy. D.A.

AWARD



The following reference was received for adjudication from the appropriate Government:

“Whether the action of the (1) Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. (2) The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. to retain junior workers who are junior to Shri Madan Lal S/o Shri Puran Chand workman and to give him break in service as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged beldar by the respondent 1 on February 10, 1999 and posted to Herbal Garden, Neri in Hamirpur district. Claiming to have been working at the said place ever since his engagement as daily waged beldar, the petitioner alleged that the respondents 1 and 2 had been giving fictional breaks in his service so that he could not be able to complete 240 days in any of the calendar years. His co-workmen namely Pawan Kumar, Jasbir Singh, Ravinder Kumar, Desh Raj, Chaman Lal, Vijay Kumar, Ramesh Chand and Milap Chand, who were also working at Herbal Garden, Neri as daily waged beldar, were also given fictional breaks except one Satish Kumar, who was also engaged as daily wagger by the respondent 1 and working in the said garden. In the case of Satish Kumar, no fictional break, according to the petitioner, was ever given and the respondents. act of giving fictional breaks in the petitioner.s service and that of his aforementioned co-workers is violative of the provisions of Section 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act, for short). Some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who according to the petitioner were also engaged on daily wages basis in another herbal garden of Ayurveda department namely Herbal Garden, Joginder Nagar in Mandi district, were also being given fictional breaks in their service. In their case, the Incharge, Herbal Garden, Joginder Nagar, was, however, forbidden from giving fictional breaks by the Director of Ayurveda, vide his letter dated July 18, 1999. Claiming the fictional breaks in his case to be the intentional act of the respondents, the petitioner further averred that he having never absented from work wilfully was entitled to continuity of service in view of the provisions of Section 25-B of the Act. Besides, he is entitled to wages for the period of fictional breaks. He therefore prays for a direction to the respondents to count the period of fictional breaks towards continuity of his service and pay him wages for the said period along with interest @ 9% per annum. He also prays for a direction to the respondents to regularise his service on the basis of his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged beldar at Herbal Garden, Neri on February 10, 1999, but refuted his allegation of fictional breaks. Claiming the work of Herbal Garden, Neri to be a seasonal work, the respondents averred that the petitioner and other workers namely Chaman Lal, Vijay Kumar, Ramesh Chand, Baljit Singh, Pawan Kumar, Jasbir Singh, Desh Raj, Ravinder Kumar, Bahadur Singh, Chander Kant, Ravinder Kumar, Madan Lal and Vijay Singh were engaged on daily wages basis at the said garden subject to availability of work and budget, and no fictional break was ever given in their service. As for Satish Kumar, he was in fact engaged as daily waged worker at Herbal Garden, Joginder Nagar on 1.7.1996 and he being deft in nursery development work was temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the said work and other related works there. About four years later he was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery development work upto the desired level. On the basis of these averments the respondents pray for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondents have been giving fictional breaks in the service of the petitioner. . .OPP
2. Whether Satish Kumar is junior to the petitioner, as alleged. . .OPP
3. If the above issues 1 and 2 are proved, what relief of service benefits the petitioner is entitled to? . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes partly, as the respondents have been giving breaks in the service of the petitioner.
Issue 2 :	No
Issue 3 :	The petitioner is entitled to the relief as mentioned in the operative part of the award.
Relief :	The claim petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUE 1

7. The petitioner's claim of having been engaged as daily waged Beldar at Herbal Garden, Neri on February 10, 1999, is not disputed by the respondents. Also, his claim that he was still working as beldar on daily wages basis at the said garden, is not denied by the respondents. What is denied by the respondents is his allegation of fictional breaks. But this denial of theirs appears to be far from truth in view of the materials on record. The Mandays Chart of casual labourers working in Herbal Garden, Neri is demonstrative of the petitioner having worked for 188 days in 1999, 210.5 days in 2000, 186 days in 2001, 199.5 days in 2002, 209 days in 2003, 202 days in 2004, 246 days in 2005, 328 days in 2006, 296 days in 2007 and 117 days during the period from January 1, 2008 to April, 2008. That there have been breaks in his service is manifest from this document. In substantiation of his allegation that the breaks in service were notional/fictional, the petitioner swore an affidavit Ex. PW1/A wherein he alleged that the respondents had been giving notional/fictional breaks in his service during the period; January, 1999 to April, 2005. Besides, he relied upon a copy of the letter dated July 18, 1999 addressed to the Incharge, Herbal Garden, Joginder Nagar by the Director of Ayurveda, Himachal Pradesh, Annexure P1. This letter in its material part reads:

**“You are hereby advised not to give any break after 89 days in future to daily paid Labourers who are engaged to work in Herbal Garden as such a notional break has been disapproved by the competent courts also.”**

The petitioner's allegation is that some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were also being given fictional breaks in their service, and that the Incharge of the said Garden was forbidden from so doing by the Director of Ayurveda, vide his aforementioned letter dated July 18, 1999, Annexure P1. As to this allegation, the respondents' averments in paragraph 7 of their joint reply are:

**“That the contents of para-7 are admitted to the extent that these workers Sh. Sohan Singh, Lohli Devi, Ram Singh, Saina Devi, Puni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judhia Devi, Nirmala Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram & Kala Devi were engaged in Herbal Garden, Joginder Nagar and their notional breaks were discontinued by the order of Director Ayurveda, H.P. being senior. The office order issued by the Director Ayurveda to discontinue the breaks is not applicable to the casual labourers working in Herbal Garden Neri because they are being engaged subject to the availability of work & budget, as the work of Herbal Garden Neri is a seasonal work.”**

(emphasis supplied)

8. By these averments, what stands admitted by the respondents is that abovenamed workers, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were being given fictional/notional breaks in their service, which practice was discontinued on receipt of an office order issued by the Director Ayurveda. Why the said Director's office order to discontinue the breaks in service could not be made applicable to the casual labourers working in Herbal Garden, Neri, is averred to be their having been engaged subject to the availability of work and budget, as the work of Herbal Garden, Neri, according to the respondents, is a seasonal work. Going by this claim of the respondents, the petitioner's service, or for that matter the service of the workmen engaged in Herbal Garden, Neri used to be terminated from time to time on account of cessation of work and non-availability of budget. They used to be re-engaged on the availability of work and budget. Although there is no plausible material on record to lend assurance to the respondents' claim that the work of Herbal Garden, Neri is only seasonal, and that the petitioner and his aforementioned co-workers were engaged there as casual workers subject to the availability of work and budget, even if this claim is assumed to be true, the petitioner is entitled to the relief of continuity of service in view of the provisions of Section 25-B of the Act, which in its material part says:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.....”

9. It is manifest from these provisions that a workman is deemed to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. If to go by the respondents' stand, the breaks in the petitioner's service were caused on account of cessation of work and non-availability of funds. But the cessation of work and the non-availability of funds not been attributable to any fault on the part of the petitioner, he is to be considered in continuous service ever since his engagement as beldar on daily wages basis (February 10, 1999). The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

## ISSUE 2

10. The petitioner's claim that Satish Kumar having been engaged by the respondents as daily waged beldar in Herbal Garden, Neri on 12.4.1999 was junior to him, to my thinking, does not appear to be having a ring of truth in view of materials on record. The respondents' averments as also the evidence led by them are indicative of Satish Kumar having been engaged as daily waged beldar in Herbal Garden, Joginder Nagar on July 1, 1996 and his having been temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the nursery development work there. According to the respondents, the reason why Satish Kumar was temporarily shifted to Herbal Garden, Neri, was his being deft in nursery development work and the casual workers engaged in Herbal Garden, Neri not being in the know of that work. About four years later, Satish Kumar was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery work upto the desired level. There being no reason to discredit this claim of the respondents, the petitioner's claim that Satish Kumar is junior to him cannot be accepted and is therefore rejected. The issue on hand is accordingly held against the petitioner and in favour of the respondents.

## ISSUE 3

10. In view of the facts and circumstances of the case and my findings on the foregoing issues, the petitioner is entitled to only the relief of continuity of service from the date of his engagement as daily waged beldar (10.2.1999). The issue on hand is held accordingly.

11. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to continuity of service from the date of his engagement as daily waged beldar (10.2.1999). He is, however, held not entitled to wages for the periods of break in his service. Also, his claim that certain workers junior to him were retained is rejected. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 506/2004  
Date of Institution : 30.12.2004  
Date of decision : 26.12.2008

Shri Mast Ram S/o Shri Dumnu Ram, V.P.O. Tikri, Tehsil Sarkaghat, Distt. Mandi, H.P.

*. .Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Sarkaghat, Distt. Mandi, H.P.

*. .Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Mast Ram S/o Shri Dumnu Ram, daily wages beldar by the Executive Engineer, H.P.P.W.D. Division, Sarkaghat, District Mandi, H.P. w.e.f. 31.5.2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar, and that he was allowed to work only for 7 days in the month of September, 2000. On September 16, 2000, his services, according to him, were illegally terminated by the respondent. Claiming to have been re-engaged by the respondent for 12 days in the month of October, 2000, the petitioner further averred that his services were unlawfully terminated by the respondent on May 31, 2001. Aggrieved, he filed before the Himachal Pradesh Administrative Tribunal an original application (OA No.65/2001), which was dismissed for want of jurisdiction. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services, the petitioner further averred that during the period he remained in the employ of the respondent, artificial breaks were given in his service, for no fault of his, and the period of interrupted service was liable to be counted towards „continuous service. as defined under Section 25-B of the Industrial Disputes Act, 1947 (the Act, for short). In dispensing with the services of the petitioner, the respondent not only violated the provisions of Section 25-F of the Act but also violated the principle of first come last go. as envisaged under Section 25-G of the Act, because certain workmen namely Pyar Chand, Dhmaswer, Parma Ram, Blabir Singh, Satish Kumar and others, who were junior to the petitioner, were retained in service at the time of termination of his services. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages and all other consequential service benefits. He also prayed for a direction to the respondent to count the period of artificial breaks towards continuous service and maintain a seniority list for the purpose of regularisation of his service as per the policy of the Government.

3. Refuting the petitioner's allegation of artificial breaks in his service, the respondent in his reply averred that he (petitioner) was engaged as daily waged Beldar as against „seasonal works. in the month of September, 1993, and that his services were never terminated, but he had abandoned the job on his own during the year 2001-2002 and thus lost his seniority. Claiming the petitioner to have worked for 228½ days in 2000 and 89 days in 2001, the respondent further averred that the petitioner never completed 240 days „which is the criteria for continuance of service.. As for the petitioner's allegation that the workmen namely Pyar Chand, Dhmaswer, Parma Ram, Blabir Singh and Satish Kumar, who were junior to him, were retained in service, the respondent's contention is that these persons having worked for 235, 233, 245 ½, 296 and 269 days respectively during the year 2000 and being still in service are considered senior to the petitioner. Refuting the petitioner's allegation of violation of the principle of „last come first go., the respondent averred that this principle could not be said to have been violated in view of the petitioner having abandoned the job on his own. On the basis of these averments, the respondent prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to?

. .OPP

2. Whether the respondent had been giving fictional breaks in the service of the petitioner.

. .OPP

3. Whether the petitioner had abandoned the job on his own in 2001.

. .OPR

4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes he is entitled to reinstatement, continuity of service and 50% back-wages as mentioned under this issue.

Issue 2 : No

Issue 3 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

## ISSUES 1, 2 and 3

7. These issues being inter-linked are taken up together.

8. The materials on record are indicative of the petitioner having been engaged by the respondent as daily waged Beldar in September, 1993 and his having worked as such upto May, 2001. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services, the petitioner averred that during the period he remained in the employ of the respondent, artificial breaks were given in his service for no fault of his, and that the period of interrupted service was liable to be counted towards „continuous service. as defined under Section 25-B of the Act. But these averments, to my thinking, do not appear to have been established in view of the materials on record. The petitioner.s claim of having completed 240 days during the period of 12 calendar months preceding the date of his retrenchment does not find assurance from the mandays chart Ex. PW1/C, which is indicative of his having worked for about 201 days during the period from May, 2000 to May, 2001. It is therefore difficult to accept his claim. Also, his allegation of fictional breaks cannot be said to have been established, for in substantiation thereof, he did not choose to adduce in evidence such muster rolls or any other document as may show that fictional breaks were given in his service. Another reason why this allegation of his cannot be said to have been substantiated is his failure to particularise the periods of the alleged fictional breaks during the period he remained in the employ of the respondent. The issue 2 is therefore held against him and in favour of the respondent.

9. But the respondent.s claim, on the other hand that the services of the petitioner were never terminated but he had abandoned the job on his own in May, 2001, also, to my mind, goes without proof. The respondent to establish this claim ought to have brought on record the muster roll wherein the petitioner may have been marked absent or shown to have abandoned the job in May, 2001. But the respondent having failed so to do, it is difficult to accept his claim. More so, in view of the evidence led by the petitioner, which is demonstrative of his services having been terminated by the respondent in May, 2001. The issue 3 is therefore held in favour of the petitioner and against the respondent.

10. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

11. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one months.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

12. As already observed, the petitioner.s claim of having completed 240 days during the period of 12 calendar months preceding the date of his retrenchment in May, 2001 does not ring true in view of the mandays chart Ex. PW1/C, which is indicative of his having worked for about 201 days during the period; May, 2000 to May, 2001. He having thus not remained in „continuous service for one year. as defined under Section 25-B of the Act, the respondent was not obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The said provisions cannot therefore be said to have been violated.

13. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable in view of the materials on record. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”**

14. The petitioner in his statement as PW1 claimed the workmen namely Pyar Chand, Dhameshwar, Parma Ram, Kanshi Ram, Rajinder, Blabir Singh, Satish Kumar etc. to be junior to him and their having been made regular employees. This claim of his having not been challenged during his cross-examination by the respondent deserves acceptance. More so, when the document Ex. RW2/A as also the seniority list of additional labour are indicative of the workmen namely Pyar Chand, Satish Kumar, Balbir Singh, Parma Ram and Dhameshwar being junior to the petitioner. Besides these workmen, Kanshi Ram and Rajinder were also junior to the petitioner, and this fact is manifest from the document Ex. RW2/A (also Ex. PW1/C). The aforementioned list of Additional Labour is demonstrative of the workmen namely Pyar Chand, Satish Kumar, Balbir Singh, Parma Ram and Dhameshwar Singh having been retained in service at the time the services of the petitioner were dispensed with. In terminating the services of the petitioner, the respondent is therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. The termination of services of the petitioner by the respondent was therefore unlawful. As a result, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment in May, 2001. In view of the facts and the circumstances of the case, he, to my mind, is entitled to 50% back-wages from the date of termination of his services. The issue 1 is accordingly held in favour of the petitioner and against the respondent.

#### RELIEF

15. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service from the date of his retrenchment in May, 2001. He is also held entitled to 50% back-wages from the said date. The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of December, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 101/2007

Date of Institution : 3.9.2007

Date of decision : 31.3.2009

Shri Mauji Ram S/o Shri Manglu Ram, Vill. Saul, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P.

. .Petitioner.

Versus

Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P.

. .Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Mauji Ram S/o Shri Manglu Ram workman by the Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P. w.e.f. June, 2003 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in the month of January, 1998, and that he worked as such in Wild Life Division, Kullu until September, 2003. His services were, however, terminated by the respondent w.e.f. September, 2003 without giving him one month's notice and paying him retrenchment compensation as envisaged under Section 25F of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have never absented from work, the petitioner further averred that during the period of his employment, the respondent had been giving fictional breaks in his service, even though there was availability of work and funds. In terminating the services of the petitioner, the respondent, it is further averred, also violated the principle of „Last Come First Go. as envisaged under Section 25-G of the Act, because the workmen namely Chander, Brij Lal, Santosh Kumar, Salig Ram and others, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25-N of the Act, because no prior permission for termination of services of the petitioner was obtained from the appropriate Government nor was he paid retrenchment compensation. It is also averred that the respondent had after the petitioner's retrenchment engaged new workers on daily wage basis without giving the petitioner an opportunity to offer himself for re-employment and thus violated the provisions of Section 25H of the Act as well. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential service benefits. He also prayed for a direction to the respondent to take into account the periods of break in his service towards continuity of service.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in the month of January, 1998, but denied having terminated his services from September, 2003 unlawfully. Claiming the work of his department to be of a seasonal nature, the respondent averred that the petitioner was engaged as casual worker subject to availability of work/funds and that he had worked intermittently. Denying having given fictional breaks in the service of the petitioner, the respondent further averred that the petitioner had worked intermittently “depending upon the availability of funds/works” upto August, 2007 whereafter he on his own did not turn up for work. No workman junior to the petitioner, according to the respondent, was retained in service nor was any new worker engaged on muster roll basis after the petitioner abandoned the job on his own. In view of the seasonal nature of the work for which the petitioner was engaged as casual worker subject to availability of work and funds, no provision of the Act, according to the respondent, can be said to have been violated. More so, when he on his own did not turn up for work after August, 2007. It is also averred that the petitioner is guilty of suppressio veri and the petition not maintainable in the present form.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petitioner is guilty of suppressio veri. . .OPR
3. Whether the claim petition is not maintainable. . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : The respondent is not proved to have terminated the services of the petitioner w.e.f. June, 2003 as mentioned in the Reference. He is therefore not entitled to the relief he prayed for.
- Issue 2 : Yes
- Issue 3 : Yes.
- Relief : Petition dismissed per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. In the Reference, which appears to have been based on the Conciliation Officer-cum-Labour Inspector's report no. 698-99 dated December 31, 2005, services of the petitioner are stated to have been terminated w.e.f. June, 2003. But nowhere in his statement of claim did the petitioner allege that his services were terminated w.e.f. June, 2003. What is inter alia averred by him is that he was engaged by the respondent as daily waged Beldar in the month of January, 1998, and that his services were illegally terminated by the respondent from September, 2003. He in paragraphs 1 and 2 of his affidavit Ex. PW1/A claimed to have worked continuously from January, 1998 to September, 2003 and alleged in paragraphs 3 and 8 that his services were illegally terminated by the respondent in the month of September, 2003. However, in the prayer clause, he prayed for setting aside the periods of break in his service from January, 1998 to September, 2003 and illegal termination from June, 2003. But the materials on record are not demonstrative of his services having been terminated w.e.f. June, 2003. The mandays chart Ex. PW1/E the correctness of which is not disputed by the petitioner, is indicative of his having worked for 8, 107, 149, 218, 271 days in 1998, 1999, 2000, 2001 and 2002 respectively and 31, 28, 31, 30, 31, 30, 12, 26 and 4 days in the months of January, February, March, April, May, June, July, August and September, 2003 respectively. In view of this document, the respondent's denial of having terminated the services of the petitioner and the latter's inconsistent stand as to the date of termination of his services, I have no hesitation in holding that his services were not terminated w.e.f. June, 2003, not to speak of the alleged illegality in the termination of his services w.e.f. the said point of time as mentioned in the Reference. He is therefore not entitled to the relief he prayed for. The issue under discussion is accordingly held against him and in favour of the respondent.

##### ISSUE 2

8. In view of what has been observed under the foregoing issue, the petitioner is decidedly guilty of suppressio veri. The issue on hand is therefore held in favour of the respondent and against the petitioner.

##### ISSUE 3

9. In view of my findings on the above issue 1, the petition is not maintainable. The issue on hand is therefore held in favour of the respondent and against the petitioner.

#### RELIEF

10. Judged in the light of my findings on the issues above, particularly issue 1, the claim petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.



IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 385/2002

Date of Institution : 16.12.2002

Date of decision : 20.11.2008

Sh. Mohan Singh S/o Shri Mani Ram, Village Jimjima, P.O. Dul, Tehsil, Joginder Nagar, Distt. Mandi, H.P.  
..Petitioner

*Versus*

The Executive Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR.  
For the Respondent : Sh. B.K. Sood, Advocate.

AWARD

The following reference was received for adjudication from the appropriate Government:

“क्या श्री मोहन सिंह दैनिक वेतन बेलदार को अधिवासी अभियन्ता, हि0 प्र0 राज्य विद्युत बोर्ड मण्डल, जोगिन्द्रनगर द्वारा किसी कारण औद्योगिक विवाद अधिनियम 1947 की धारा 25—जी व 25—एच की अनुपालना किए बिना नौकरी से दिनांक 21—10—1999 को निकाला जाना वैध है या अवैध? यदि नहीं तो कामगार किस राहत एवं क्षतिपूर्ति का हकदार है?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster rolls on February 25, 1999, and that he worked as such upto October 20, 1999. On October, 21, 1999, his services, according to the petitioner, were terminated by the respondent orally. Claiming to have worked for 60 days during the period he remained in the employ of the respondent, the petitioner alleged that the respondent had given artificial breaks of 305 days in his service during the period from February 25, 1999 to October 20, 1999. The artificial breaks having been given without any reason, the petitioner was entitled to the benefit of continuity of service in view of the provisions of Section 25-B of the Industrial Disputes Act (the Act, for short). In dispensing with the petitioner's services, the respondent, it is further alleged, violated the provisions of Clause 14(2) of the HPSEB Establishment Standing Orders (hereinafter referred as to the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946, for he was not served with any notice nor was he paid retrenchment compensation. Also, no inquiry was conducted before retrenching him. The respondent, according to the petitioner, also failed to observe the principle of „last come first go. as envisaged under Section 25-G of the Act, for the workers namely Man Singh S/o Kalyan Singh, Prithi Chand S/o Bhoop Singh, Safi Mohammad S/o Hamid Ahmed, Durga Dass S/o Kalu Ram and others, who were junior to him were retained in service at the time of his retrenchment. Besides, the respondent violated the provisions of Sections 25-H and 25-N of the Act. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on February 25, 1999, but refuted his allegation of fictional breaks. Claiming the respondent to have worked for a short period of 60 days during the period from February 25, 1999 to October 20, 1999, the respondent averred that he (petitioner) used to remain absent from work and ultimately abandoned the job after October 20, 1999. So, it was in view of these circumstances that he was neither charge-sheeted nor was he paid any compensation. Claiming the petitioner to be a Beldar of casual nature, the respondent further averred that in view of his wilful absence from work from time to time, his case was not covered by the provisions of Section 25-B of the Act. Further, in view of the petitioner having not worked for 90 days during the period he remained in the employ of the respondent, his name was not included in the list of temporary workmen. The workmen namely Man Singh, Prithi Chand, Safi Mohamad and Durga Das, who are alleged have been retained in service, had not abandoned the job and that was why they were still in the employ of the respondent. Since the petitioner had abandoned the job on his own, the respondent cannot be said to have violated the principle of „last come first go. as envisaged under Section 25-G of the Act, nor can he be said to have committed breach of Clause 14(2) of the Standing Orders. Also, the provisions of Section 25-N of the Act cannot be said to have been violated in view of the facts and circumstances of the case. The respondent's other contentions relate to limitation, maintainability of the claim, misjoinder of the parties and non-joinder of necessary parties.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 21.10.1999 is violative of the provisions of the I.D. Act, 1947 and certified Standing Orders framed by State Electricity Board? . .OPP
2. Whether the petition is not maintainable? . .OPR
3. Whether the petition is barred by time? . .OPR
4. Whether the petitioner is estopped from filing the petition due to his act and conduct? . .OPR
5. Relief.

6. The respondent's allegation that the petitioner had abandoned the job on his own, did not find favour with my Ld. Predecessor-in-office. In terminating the services of the petitioner, the respondent was held to have violated the provisions of Clause 14 (2) of the Standing Orders and Issue 1 was therefore held in the affirmative. Issues 2 to 4 were held in the negative, and in view of these findings, my Ld. Predecessor-in-office allowed the claim petition partly, vide his award dated June 1, 2005. Aggrieved, the respondent preferred before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No.1384/2005). The Hon.ble High Court held that the Establishment of Himachal Pradesh State Electricity Board having been exempted from the applicability of the provisions of the Standing Orders, "the Labour Court could not pass the award on the basis of Clause 14(2) of the Standing Orders framed by the Board under the Industrial Employment (Standing Orders) Act, 1946." The impugned award dated June 1, 2005 was therefore set aside and the matter remitted to this Court for decision afresh in accordance with law, vide judgment dated March 24, 2008 of the Hon.ble High Court of Himachal Pradesh.

7. For the reasons to be recorded hereinafter, my findings on the issues aforementioned are as under:

Issue 1	Yes partly, because the respondent is found to have violated the provisions of Sections 25-G and 25-H of the Act.
Issue 2	No
Issue 3	No
Issue 4	No
Relief	The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

8. Recounting the material facts averred in the claim petition, the petitioner in his statement as PW1 maintained that he was engaged by the respondent as Beldar and worked as such from 25.2.1999 to 20.10.1999. His services, according to him, were dispensed with by the respondent on October 21, 1999 without any notice, charge-sheet and payment of compensation. Refuting this allegation, the respondent, on the other hand, averred that the services of the petitioner were never terminated, but he used to remain absent from work and ultimately abandoned the job on his own after October 20, 1999. But this claim, to my mind, does not ring true in view of the respondent's failure to lead such documentary evidence as may show that the petitioner had abandoned the job on his own. The petitioner's claim that his services were terminated by the respondent orally on October 21, 1999, therefore deserves acceptance and is accepted.

9. However, the petitioner's allegation that the respondent had given fictional breaks of 305 days during the period of his employment that is February 25, 1999 to October 20, 1999, to my thinking, does not carry conviction in view of the petitioner's admission of the respondent's suggestion put to him during his cross-examination as PW1 that he had not completed 240 days. The mandays chart Annexure RA (Ex. RW1/C) the correctness of which has been admitted by the petitioner in his cross-examination as PW1, is indicative of his having worked for; 25 days during the period from 25.2.1999 to 24.3.1999; 7 days during the period from 25.3.1999 to 31.3.1999; 20 days during the period from 1.4.1999 to 20.4.1999 and 8 days during the period from 11.10.1999 to 20.10.1999. In view of these working days the respondent's allegation that the petitioner used to remain absent from work, to my mind, appears to having a ring of truth. The petitioner's allegation that the respondent had given fictional breaks of 305 days in his service cannot therefore be accepted and is rejected.

10. However, the petitioner's allegation that in terminating his services, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, does not appear to be without substance in view of the materials on record. The petitioner in his statement as PW1 inter alia alleged "After my services were dispensed with, the respondent retained number of junior persons namely Safi Mohammad, Prithi Chand and Gian Chand etc." This allegation appears to be true in view of the documentary evidence, particularly the seniority list issued by the Additional Superintending Engineer, Electrical Division HPSEB, Janginder Nagar, vide his letter dated September 5, 2002 Ex. PA. The said seniority list is demonstrative of Man Singh, Prithi Chand, Safi Mohammad, Durga Dass and Gian Chand, whose names figure at serial nos. 112B, 113, 114, 115 and 116, and who are shown to have been engaged on 1.5.1999, 21.6.1999, 21.7.1999, 21.9.1999 and 11.10.1999 respectively, being junior to the petitioner. The respondent's witness V.S.Thakur's claim in his statement as RW1 that Man Singh, Prithi Chand and Safi Mohammad were senior to the petitioner, is therefore nothing but falsity. More so, in view of his categorical admission of the petitioner's suggestion put to him during his cross-examination as RW1 "that names of persons mentioned in the seniority list at serial nos. 112 to 122, their date of joining mentioned in the seniority list and these dates are about the date of their joining". There is no gainsaying the fact that the aforesaid workmen, who were junior to the petitioner, were retained in service at the time of termination of his services on October 21, 1999. The respondent is therefore proved to have violated the provisions of Section 25-G of the Act, which reads:

**"25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

11. But the respondent is also proved to have failed to observe the provisions of Section 25-H of the Act, which says:

**"25 (H). Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".**

12. The seniority list aforementioned is indicative of Raj Kumar, Tara Chand, Chatter Singh, Birbal, Om Prakash, Subhash Chand and Sanjay Kumar, whose names figure at serial nos. 117, 118, 119, 120B 121C, 122C and 123L respectively, having been engaged as daily waged Beldar, Electrical Division, HPSEB, Joginder Nagar after termination of the services of the petitioner.

13. Ld. counsel for the respondent contends with vehemence that the workers whose names figure at serial nos. 112 to 122 in the seniority list, were also retrenched and later re-engaged in compliance with the orders of H.P. Administrative Tribunal, Shimla, and that in view of this position, the provisions of Section 25-H of the Act cannot be said to have been violated. I am not impressed with this contention. Of the aforesaid 11 workmen, only 5 namely Prithi Chand, Safi Mohammad, Raj Kumar, Om Prakash and Subhash Chand were ordered to be re-engaged along with 3 others by the H.P. Administrative Tribunal by its judgment dated January 10, 2001 Ex. RW1/A. There being no material on record to show that Tara Chand, Chatter Singh, Birbal and Sanjay Kumar, whose names figure at serial nos. 118C, 119, 120B and 123L respectively in the seniority list, were engaged by the respondent on the basis of the orders of H.P. Administrative Tribunal, the respondent's counsel's contention merits rejection and is rejected. There being nothing to suggest that before engagement of these persons the petitioner was given an opportunity to offer himself for re-employment, the provisions of Section 25-H of the Act can safely be held to have been violated.

14. However, the petitioner's allegation that in dispensing with his services, the respondent had also violated the provisions of the Standing Orders, is not tenable, because the establishment of HPSEB stands exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

15. The upshot is that in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-G of the Act. Besides, he failed to observe the provisions of Section 25-H of the Act. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 2

16. In view of my findings on the foregoing issue, the petition is decidedly maintainable. The issue on hand is therefore held in favour of the petitioner and against the respondent.

## ISSUE 3

17. The Himachal Pradesh Government's notification whereby the industrial dispute raised by the petitioner was referred to this Court would reveal that after the termination of his services, the petitioner approached the Labour Inspector-cum-Conciliation Officer, Joginder Nagar for the redressal of his grievance. On failure of the conciliation proceedings, which must have taken some time, the said officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LI/JNR/I.D./2001-168, dated 6.6.2002. In view of these facts and circumstances, the petitioner's claim cannot be said to be suffering from the vice of delay and laches. The issue under discussion is therefore held in favour of the petitioner and against the respondent.

## ISSUE 4

18. The facts of this case do not attract the rule of estoppel. The respondent's counsel has also not been able to show how the petitioner was estoppel from filing the claim petition. The issue on hand is therefore held against the respondent and in favour of the petitioner.

## RELIEF

19. Judged in the light of findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. In view of the facts and circumstances of the case, he is, however, held not entitled to continuity of service. Also, he is held not entitled to back-wages because of his failure to lead such evidence as may show that he was not gainfully employed after his retrenchment. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 20th day of November, 2008.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 644/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Moti Lal S/o Shri Raghu Ram, R/o Village Masalwan, P.O. Bradla, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Moti Lal S/o Shri Raghu Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief. OPR

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.** -(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-



- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9321 dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref No. : 86/2005  
Date of Institution : 18.6.2005  
Date of decision : 20.1.2009

Sh. Muni Lal S/o Shri Mast Ram, Village Sumnu, P.O. Ghiri, Tehsil Sunder Nagar, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, I. & P.H. Division, Sunder Nagar, District Mandi, H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. L.B. Sharma, Adv.  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Muni Lal S/o Sh. Mast Ram workman by the Executive Engineer, I&PH Division, Sunder Nagar, District Mandi, H.P. w.e.f.16.12.2002 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent (Executive Engineer, I.& P.H. Division Sunder Nagar District Mandi) as daily waged Beldar in 1981 and worked as such upto the year 1995. In 1995, his services, according to him, were orally terminated by the respondent. Aggrieved, he preferred before the H.P. Administrative Tribunal an application (O.A. No.721/1995) and obtained stay orders. On the basis of the stay orders he was re-engaged by the respondent in the same capacity as in which he was working at the time of termination of his services. Claiming to have completed more than 240 days „in each calendar year., the petitioner further averred that his application was later dismissed by the said Tribunal for want of jurisdiction. On account of dismissal of his application the respondent dispensed with his services on December 17, 2002. Alleging

the termination of his services to be unlawful, the petitioner further averred that "the similar situated persons are working in the same place and juniors are also working/retained and are still working under the respondents." On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were terminated. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged as daily waged Beldar in 1981, the respondent in his reply averred that he (petitioner) was engaged as daily wagger in the month of March, 1982, and that he worked as such intermittently upto June, 1987. In June, 1987, the petitioner, according to the respondent, abandoned the job on his own. Having remained absent for about 8 years, he later filed before the H.P. Administrative Tribunal an O.A. No.721/1995 and succeeded in obtaining interim orders dated September 8, 1995 by misrepresenting the facts. In compliance with the Tribunal's orders of re-engagement, the petitioner was re-engaged in September, 1995 subject to the decision in the OA aforementioned. Upon dismissal of the petitioner's application by the H.P. Administrative Tribunal, his services, according to the respondent, automatically stood terminated and his disengagement w.e.f. December 16, 2002 therefore did not attract the provisions of the Industrial Disputes Act, 1947 (the Act, for short). The respondent's other contentions relate to limitation and maintainability of the reference in question.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition. Claiming to have worked in the respondent's department without any break in service from 1981 to 1990 and with breaks in his service from 1990 to 1995, the petitioner averred that his services were terminated by the respondent on September 8, 1995. Aggrieved by the termination of his services, he approached the H.P. Administrative Tribunal and obtained stay orders. However, his services, according to him, were again terminated by the respondent on December 17, 2002.

5. On the pleadings of the parties, my Ld. Predecessor-in-officer framed the following issues for determination:

1. Whether the retrenchment of the service of the claimant is in contravention of the provisions of Section 25-F of I.D. Act and the provisions of 25-G of the I.D. Act? . . .OPP
2. In case issue No.1 is proved in the affirmative, what service benefits the claimant is entitled to? . . .OPP.
3. Relief.

6. Be it stated that the petitioner's claim encompassed in issue 1 did not find favour with this Court. So, holding issues 1 and 2 in the negative, my Ld. Predecessor-in-office dismissed the claim petition, vide award dated June 8, 2007. Aggrieved, the petitioner laid challenge to the award by preferring before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No.1209/2007). The Hon.ble High Court allowed the petition and set aside the impugned award dated June 8, 2007 and remanded the matter to this Court for decision afresh on the basis of Annexure P-4 and Annexure P-8. It was inter alia observed:

".....The sum and substance of the workman's case before the learned Labour Court was that he had completed 240 days in a block of 12 calendar months before his retrenchment on 16.12.2002. The employer had placed on record the copy of mandays chart of one Shri Mann Singh before the learned Labour Court. The employer should have placed on record the mandays chart of the workman, who had filed the claim petition before the learned Labour Court. It is evident from Annexure P-4 placed on record with this petition that the workman had completed 362 days in the year 1996, 349 days in the year 1997, 357 days in the year 1998, 325 days in the year 1999, 309 days in the year 2000, 365 days in the year 2001 and 351 days in the year 2002. It is evident from Annexure P-4 supplied by the employer to the workman that he completed 240 days preceding his retrenchment. The employer was duty bound to issue show cause notice to the workman or to pay compensation to him. Admittedly, neither any notice has been issued to the workman nor any compensation was paid to him. It was the duty cast upon the learned Labour Court to call upon the Management to file the mandays chart of the workman instead of Shri Mann Singh. The learned Labour Court only on the basis of the mandays chart of Shri Mann Singh has come to the conclusion that the workman had not completed 240 days preceding his retrenchment. One Shri Amar Chand was also re-engaged after the orders passed by the learned H.P. Administrative Tribunal in O.A. No.720 of 1995. The learned Labour Court has granted relief to the similarly situated workmen as per the details given in paragraph 4 of the petition. These averments have not been denied by the employer/State in its reply. The averment contained in the reply to this paragraph is that the matter was under examination with the Labour Department and action would be taken accordingly. The judicial and quasi-judicial authorities are liable to pass consistent orders based on the same and the similar facts. It is evident from the pleadings of the parties that the case of the petitioner was at par with the other workmen whose details are given in paragraph 4 of the petition. However, the claim of the petitioner has been

rejected on the basis of the mandays chart of Shri Mann Singh and not of the petitioner. The Court has seen the original record. Admittedly, instead of mandays chart of the petitioner-Shri Muni Lal, the mandays chart of Shri Mann Singh has been filed by the employer before the learned Labour Court.

There is no force in this contention of the learned Additional Advocate General that no notice was required to be issued to the workman under Section 25(F) of the Industrial Disputes Act, 1947 since the workman was engaged pursuant to the orders dated 8.9.1995 passed by the learned H.P. Administrative Tribunal. It is true that the workman was re-engaged on 20.9.1995 on the basis of order dated 8.9.1995. However, the fact of the matter is that he has continuously worked from 20.9.1995 to 16.12.2002 and has completed 240 days in a block of 12 calendar months each calendar year. He has completed 240 days preceding his date of retrenchment, i.e. 16.12.2002. The Original Application preferred by the workman was dismissed on 7.1.2002 and the office order whereby the petitioner has been terminated is dated 16.12.2002. He had continued to work for eleven months even after the dismissal of his petition on 7.1.2002. The learned Labour Court is required to see whether the workman had completed the requisite days as required under Section 25-B of the Industrial Disputes Act, 1947. The learned Labour Court should have granted the same relief to the petitioner-workman which has been granted to similarly situated workmen, as noticed above.”

7. For the reasons to be recorded hereinafter, my findings on the issues aforementioned are as under:

Issue 1 :	Yes partly.
Issue 2 :	He is entitled to reinstatement and continuity of service as mentioned under this issue
Relief :	The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

8. The materials on record would reveal that the petitioner was engaged by the respondent as daily waged Beldar in the month of March, 1982 and worked as such upto June, 1987. He was re-engaged in 1995. However, in the same year, the respondent dispensed with his services. Aggrieved, he preferred before the H.P. Administrative Tribunal an application (OA No.721/1995) on the basis of which interim orders were passed in his favour on September 8, 1995. In compliance with the said orders, he was re-engaged as daily waged Beldar by the respondent on September 20, 1995. His application aforementioned was, however, dismissed by the H.P. Administrative Tribunal on January 7, 2002. Thereafter the respondent issued order dated December 16, 2002 terminating the services of the petitioner. The petitioner's grievance is that in terminating his services, the respondent had violated the provisions of Section 25-F of the Act. The said Section reads:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

#### **“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

10. The petitioner claims to have completed 240 days during the period of 12 calendar months preceding the date of his retrenchment (December 16, 2002). This claim of his appears to be having a ring of truth in view of the mandays chart Ex. PA, which is demonstrative of his having worked for 351 days during the period from January 1, 2002 to December 31, 2002. In view of his having thus remained in continuous service for not less than one year preceding the date of his retrenchment, the respondent was obliged to serve him with month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. But the respondent having undeniably failed so to do clearly violated the said provisions while terminating the services of the petitioner on December 16, 2002.

11. Ld. counsel for the respondent canvassed with considerable fervor that the petitioner having been re-engaged in compliance with the interim orders dated September 8, 1995 of the H.P. Administrative Tribunal and later removed from service upon dismissal by the said Tribunal of his application (O.A. No.721/1995), the respondent was not obliged to comply with the provisions of Section 25-F of the Act. This contention, to my thinking, appears to be ill conceived. The reason being that re-engaged of the petitioner in compliance with the aforementioned interim orders of the H.P. Administrative Tribunal cannot in law be interpreted to mean that the respondent stood absolved of his obligation to comply with the provisions of Section 25-F of the Act even if the petitioner had worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services. In the Civil Writ Petition (CWP NO.1209/2007) preferred before the Hon.ble High Court of H.P. by the petitioner, one of the contentions raised by the Ld. Additional Advocate General was that in view of the petitioner having been re-engaged pursuant to the orders dated September 8, 1995 passed by the H.P. Administrative Tribunal, no notice was required to be issued to the petitioner. Negating this contention, the Hon.ble High Court in its judgment dated October 22, 2008 inter alia held:

**“There is no force in this contention of the learned Additional Advocate General that no notice was required to be issued to the workman under Section 25(F) of the Industrial Disputes Act, 1947 since the workman was engaged pursuant to the orders dated 8.9.1995 passed by the learned H.P. Administrative Tribunal. It is true that the workman was re-engaged on 20.9.1995 on the basis of order dated 8.9.1995. However, the fact of the matter is that he has continuously worked from 20.9.1995 to 16.12.2002 and has completed 240 days in a block of 12 calendar months each calendar year. He has completed 240 days preceding his date of retrenchment, i.e. 16.12.2002.”**

12. The contention raised by the Ld. counsel for the respondent therefore merits rejection and is rejected.

13. However, the petitioner.s another allegation that in dispensing with his services, the respondent had violated the provisions of Section 25-G of the Act, to my mind, does not appear to have been substantiated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment. –** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

14. Nowhere in his affidavit Ex. PW1/A or cross-examination as PW1 did the petitioner allege that certain workmen, who were junior to him, were retained in service by the respondent at the time of termination of his services. What is inter alia deposed by him is:

**“...as the similar situated persons are still working with the respondents. Their names are Upender, Mani Ram, Daulat Ram, Bhup Singh etc....”**

15. As there is no plausible evidence to show that certain workmen were junior to the petitioner and retained in service by the respondent at the time the services of the petitioner were dispensed with, the abovementioned provisions of Section 25-G of the Act cannot be said to have been violated.

16. The upshot is that in terminating the services of the petitioner on December 16, 2002, the respondent had violated the provisions of Section 25-F of the Act. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 2

17. In view of what has been held under the foregoing issue, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment (December 16, 2002). However, he is not entitled to back-wages because his pleadings are non-extent in such averments as may show that he remained idle or was not gainfully employed after his retrenchment. Also nowhere in his affidavit Ex. PW1/A or cross-examination as PW1 did he utter a word on these lines. The issue under discussion is held accordingly.

## RELIEF

18. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service from the date of his retrenchment (December 16, 2002). He is, however, held not entitled to back-wages. The respondent is directed to re-engage him within a period of 90 days, failing which he shall be entitled to 25% back-wages from the date of his unlawful retrenchment (December 16, 2002). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 20th day of January, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref. No. : 33/2006  
Date of Institution : 20.3.2006  
Date of decision : 27.12.2008

Sh. Manish Kumar S/o Chattar Singh, Village Kothi, P.O. Thara, Tehsil Joginder Nagar, Distt. Mandi, H.P. .  
.Petitioner.

*Versus*

Executive Engineer, HPSEB (E) Division, Joginder Nagar, District Mandi, H.P.

.Respondent

For the Petitioner : Sh. K.S. Guleria, Adv.  
For the Respondent : Sh. J.S. Chauhan, Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Manish Kumar S/o Shri Chattar Singh workman by the Executive Engineer, HPSEB (E) Division, Joginder Nagar, District Mandi, H.P. w.e.f.25.5.1998 without complying the provisions of the Industrial Disputes Act, 1947 and Rule 14(2) of the Certified Standing Orders of the board is proper and justified? If not, what relief of service benefits and compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily wager on muster roll basis on October 17, 1996, and that he worked as such upto May 24, 1998. On May 25, 1998, his services were, however, terminated by the respondent orally without complying with the relevant provisions of the Industrial Disputes Act, 1947 (the Act, for short) and the rules made thereunder. In dispensing with his services, the respondent according to the petitioner, also violated the provisions of Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946. Alleging the respondent to have given artificial breaks in his service, the petitioner averred that the breaks given on account of cessation of work were not due to any fault of his, and that the period of breaks in his service was liable to be counted towards the continuity of his service. In terminating his services, the respondent, according to the petitioner, violated the principle of „last come first go. as envisaged under Section 25-G of the Act, for certain workers namely Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25-H of the Act, because after the petitioner's removal from service certain workers were engaged without giving him an opportunity to offer himself for re-employment. The petitioner therefore prayed for a direction to the respondent to reinstate him with back-wages. He also prayed for a direction to the respondent to take into account the period of interrupted service towards continuity of service.

3. Refuting the petitioner's allegation of artificial breaks in his service, the respondent in his reply averred that the petitioner was initially engaged as daily waged Beldar as against a specific scheme/work; "providing of 11KV, HT Line to 63 KVA, Sub Station Tullah-II etc" on September 25, 1996, and that on completion of the work on May 24, 1998, his services automatically stood terminated. In view of the petitioner having been engaged as against the work started under a specific scheme and the automatic termination of his services on completion of the work, no provision of the Act can be said to have been violated, according to the respondent. As for the allegation of violation of the provisions of the Standing Orders, the respondent's contention is that this allegation is untenable, for the establishment of the HPSEB stands exempted from the applicability of the Standings Orders. As to the petitioner's allegation that the workmen namely Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar, who were junior to him, were retained at the time his services were dispensed with, the respondent averred:

**"...It is denied that the services of the workmen alleged to be senior to him were kept continued. Their services were also dispensed with on completion of the said scheme. But, they remained in touch with replying respondent for knowing the availability of other works. But, the applicant never approached to replying respondent for his re-engagement."**

4. The respondent's other contentions relate to estoppel, limitation, misjoinder of the parties and non-joinder of necessary parties.

5. The petitioner in his rejoinder admitted the respondent's claim that he was engaged as daily waged Beldar on September 25, 1996 and worked as such upto May, 24, 1998. Rest of the respondent's contentions, were, however, controverted by him.

6. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified? . . .OPP
2. If the above issue is proved in the affirmative to what relief of service benefit the claimant is entitled to the respondent? . . .OPP
3. Whether the claim petition is barred by delay and laches? . . .OPR
4. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Issue 2 : The petitioner is entitled to the relief as mentioned in the operative part of the award.

Issue 3 : No

Relief. : The petition allowed partly per operative part of the award.



## REASONS FOR FINDINGS

## ISSUES 1.

8. The respondent.s claim that the petitioner was engaged as against a specific work started under a scheme, and that his services automatically stood terminated on completion of the work, to my thinking, does not appear to be holding water in view of what has been deposed to by the respondent.s witness S.S. Guleria, then Assistant Engineer, Electrical Sub Division, Makrari, Tehsil, Joginder Nagar, as RW1. This witness inter alia testified:

...The petitioner was engaged on October 17, 1996, vide muster roll issued on September 25, 1996. He was engaged on temporary basis as against the work namely „Lift Irrigation Scheme for supply of 11KV, HT Line. in our Sub Division and he worked upto May 24, 1998. During this period, he used to come to work at his own will and remained absent from time to time.

....After May 24, 1998, the petitioner abandoned the job on his own and the remaining workers who were regular in job, became senior to him.....”

9. But nowhere in his reply did the respondent aver that the petitioner had abandoned the job on his own after May 24, 1998. What is claimed by the respondent is that the petitioner was engaged as against a specific work on September 25, 1996, and that his services automatically stood terminated on completion of the work on May 24, 1998. By examining the aforesaid witness (S.S.Guleria), the respondent on his own showing belied his claim that the petitioner.s services automatically came to an end on completion of the specific work on May 24, 1998.

10. The petitioner in his affidavit Ex. PW1/A deposed that he was engaged as daily waged Beldar on muster roll basis on September 25, 1996, and that his services were orally terminated by the respondent on May 25, 1998. There being no reason to discredit this deposition of his, I am disposed to hold that the termination of his services amount to retrenchment as defined under Section 2(oo) of the Act. More so, when the materials on record, particularly the evidence led by the respondent, is not indicative of the petitioner having been made aware of his having been engaged as against a specific work at the commencement of his employment and his employment having come to an end simultaneously with the termination of the scheme under which the work was undertaken.

11. The petitioner alleged that his services were terminated by the respondent without serving him with a prior notice. This allegation is no doubt true, but there being nothing suggestive of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the respondent was not obliged to serve with him a one month.s notice as envisaged under Section 25-F of the Act. In dispensing with the services of the petitioner without serving with him any notice, the respondent cannot therefore be said to have committed any illegality.

12. As for the petitioner.s claim that the respondent had been giving fictional breaks in his service, and that the period of fictional breaks is liable be counted towards his continuity in service, the same, to my thinking, does not appear to be holding water for want of plausible evidence. This claim of his therefore merits rejection and is rejected.

13. However, the petitioner.s allegation that the workmen namely Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar were junior to him and retained at the time his services were dispensed with, to my mind, appears to be having a ring of truth in view of the materials on record. In paragraph (III) of his statement of claim, the petitioner inter alia averred:

**“...The junior to the applicant has been allowed to work, but the service of the applicant was illegally terminated against the principle of First Come Last Go. The respondents have retained many junior person namely Molak Ram, S/o Ram Lal, Om Chand S/o Dodu, Dalip Singh, Damodar Dass, Vijay Kumar, etc. & allowed them to complete 240 days & the applicant was terminated illegally without complying the provisions of Chapter-B & Sec.25-G of I.D. Act...”**

14. In his reply, the respondent, instead of refuting the petitioner.s claim that Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar were junior to him and retained in service at the time his services were dispensed with, averred:

**“...It is denied that the services of the workmen alleged to be senior to him were kept continued. Their services were also dispensed with on completion of the said scheme. But, they remained in touch with replying respondent for knowing the availability of other works. But, the applicant never approached to replying respondent for his re-engagement.”**

15. In view of these averments, the respondent.s failure to bring on record the relevant seniority list and the evidence led by the petitioner, I have no hesitation in holding that Molak Ram, Om Chand, Dalip Singh, Damodar Dass

and Vijay Kumar were junior to the petitioner and retained in service at the time of termination of his services. More so, in view of the respondent's witness S.S. Guleria's denial of knowledge in his cross-examination as RW1 that Molak Ram, Dalip Singh and Damodar Dass were junior to the petitioner. Section 25-G of the Act reads:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

16. Since the materials on record is demonstrative of Molak Ram, Om Chand, Dalip Singh, Damodar Dass and Vijay Kumar being junior to the petitioner and their having been retained in service at the time the services of the petitioner were dispensed with on May 25, 1999, the respondent can safely be held to have violated the principle of „last come first go. as envisaged under the abovementioned provisions of Section 25-G of the Act. The termination of the petitioner's service was therefore unlawful. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 2

17. In view of my findings on the foregoing issues, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of his unlawful retrenchment. Besides, he is held entitled to continuity of service from the date of his retrenchment. However, he is held not entitled to back-wages, for there is no plausible material on record to show that he was not gainfully employed after his retrenchment. The issue under discussion is held accordingly.

## ISSUE 3

18. Aggrieved by the unlawful termination of his service by the respondent on May 25, 1998, the petitioner appears to have preferred before the Himachal Pradesh Administrative Tribunal an application under Section 19 of the Administrative Tribunals Act, 1985. However, that application was dismissed by the said Tribunal on account of its jurisdictional ouster to entertain the same, vide its order dated February 26, 2002 Ex. PW1/B. Thereafter the petitioner approached the Labour Officer, Mandi for the redressal of his grievance. The dispute raised by him later came to be referred to this Court, vide the H.P. Government Notification No.11-23/84(LAB) I.D./05-MANDI dated January 31, 2006. In view of these facts and circumstances, the petitioner's claim cannot be held to be suffering from the vice of delay and laches. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

19. Judged in the light of findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is held entitled to continuity of service from the date on which his services were unlawfully terminated by the respondent (May 25, 1998). In view of the facts and circumstances of the case, he is, however, held not entitled to back-wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 27th day of December, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 573/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Shri Naveen Kumar S/o Shri Prem Chand, Village Sandoa, Post Office Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner :

Sh. N.L. Kaundal, AR

For the Respondent :

Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Naveen Kumar S/o Shri Prem Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was

retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**“25L (a) “industrial establishment” means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);

- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior

to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer



referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1008/2007-9316, dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 10, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 634/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Om Chand S/o Shri Diwan Chand, R/O Village Baradla, P.O. Dev Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

“Whether retrenchment of services of Shri Om Chand S/o Shri Diwan Chand, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?

. .OPP

2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

#### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

#### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act,

1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner.s pleadings being non-existent in his

allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9929 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 16, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 162/2007  
Date of Institution : 1.11.2007  
Date of decision : 24.11.2008

Shri Prakash Chand S/o Shri Bhikam Ram, Village Badgaon, P.O. Veer (Thungal), Tehsil Sadar, District Mandi, H.P.

. .Petitioner.

*Versus*

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.

. .Respondent.

For the Petitioner : Sh. N.L. Kaundal, vice AR  
For the Respondent : Sh. Gaurav Sharma, vice Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Shri Shri Prakash Chand S/o Shri Bhikam Ram workman by the Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 1.1.2000 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him were retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on September 29, 1998, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto December 31, 1999. On January 1, 2000, his services were terminated by the respondent by serving with him a notice dated December 20, 1999. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting



for a call till March, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on September 29, 1998, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on September 25, 1998, and that he had worked upto December 31, 1999 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shiv Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? . . .OPP
2. Whether the petition suffers from the vice of delay and laches. . .OPR
3. Whether the petitioner is estopped from filing the present petition by his act and conduct. . .OPR
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to the relief as mentioned in the operative part of the award.
Issue 2 :	No
Issue 3 :	No
Relief :	The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### ISSUE 1

7. Disputing the petitioner's claim of having been engaged on September 29, 1998, the respondent averred that he (petitioner) was engaged as daily waged beldar on September 25, 1998, and that he had worked as such upto December 31, 1999. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his

employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**

11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

“1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of „retrenchment.

2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent's contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

16. However, the petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner.s contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

**“As per the record, Prakash (petitioner) was engaged on 25.9.1998 and he worked upto 31.12.1999. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chand Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working....”**

18. The respondent.s aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (25.9.1998). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

## ISSUE 2

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

**“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”**

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

## ISSUE 3

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

## RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as

daily waged beldar (25.9.1998). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstate him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (1.1.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P. (CAMP AT MANDI)

Ref No. : 46/2006  
Date of Institution : 20.3.2006  
Date of decision : 20.1.2009

Shri Prakash Chand S/o Sh. Ram Krishan, Village Chhota Samahal, P.O. Gahar, Tehsil Sarkaghat, District Mandi, H.P.

. .Petitioner.

*Versus*

Executive Engineer, H.P.S.E.B. (Electrical) Division, Sarkaghat, District Mandi.

. .Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.  
For the Respondent : Sh. J.S. Chauhan, Adv.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of services of Sh. Parkash Chand S/o Sh. Ram Krishan workman by the Executive Engineer (E) Division, Sarkaghat, Distt. Mandi, H.P. w.e.f. 21.6.2000 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to.”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis on November 28, 1994. His services were, however, time and again interrupted on account of lock out or cessation of work which was not due to any fault on his part. So, the period of interrupted service is liable to be counted towards „continuous service. in view of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have filed before the H.P. Administrative Tribunal an application (OA No.324/1999), the petitioner further averred that his application was allowed by the Tribunal by an order dated May 10, 2000. On the basis of this order he was re-engaged by the respondent. However, on June 21, 2000, the respondent terminated his services by serving him with a notice dated June 19, 2000. In terminating his services, the respondent, according to the petitioner, violated the principle of „first come last go. as envisaged under Section 25-G of the Act, because the workmen namely Krishan Chand, Ranjit Singh, Bansilal, Yaspal and others, who were junior to him, were allowed to complete 240 days and retained in service at the time his services were dispensed with. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act. Aggrieved by his retrenchment, the petitioner again preferred before the Tribunal aforementioned an application (OA No.4069/2000). The said application was, however, dismissed by the Tribunal for want of jurisdiction, vide order dated April 29, 2002. Claiming to have remained unemployed during the period of interrupted service, the petitioner further averred that his removal from service was unlawful. He therefore prayed for a direction to the respondent to reinstate him with back-wages and

other consequential service benefits. He also prayed for a direction to the respondent to take into account the period of interrupted service towards continuity of service for the purpose of regularisation of his service in accordance with the policy of the State Government.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis on November 28, 1994, but denied his allegation of artificial breaks in his service. The petitioner, who according to the respondent was engaged as against a work of casual nature and whose services „were taken as and when required, subject to availability of the work., had worked upto May 20, 1997 with certain interruptions in his service caused by him on his own. Thereafter he abandoned the job on his own and did not report for duty, even though a letter dated May 31, 1997 was sent to him, directing him to join his duty. He later filed before the H.P. Administrative Tribunal an application (OA No.324/1999). The said Tribunal by its orders dated May 10, 2000 directed the respondent to re-engage the petitioner „in the same place from where his services were disengaged.. In compliance with these orders, the petitioner was re-engaged on May 20, 2000. By a notice dated June 19, 2000, his services were terminated in accordance with the provisions of Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the „Standing Orders.) framed under the Industrial Employment Act, 1946 w.e.f. June 21, 2000. Refuting the petitioner's allegation that the workmen namely Krishan Chand, Ranjit Singh, Bansilal, Yaspal etc were junior to him and retained in service at the time his services were dispensed with, the respondent further averred that the said workmen were re-engaged „as per the orders of the Tribunal dated 20.4.1999.. So, no provision of the Act, according to the respondent, was violated in terminating the services of the petitioner w.e.f. June 21, 2000 and he is therefore not entitled to any relief. Another count on which he is not entitled to any relief is the filing of the application by him at a later stage and beyond the period of limitation.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified? . .OPP
2. If the above issue is proved in the affirmative, what relief of service benefits the petitioner is entitled to from the respondent? . .OPP
3. Whether the claim petition is not maintainable before this Court being time barred? . .OPR
4. Relief.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |   |
|-----------|---|
| Issue 1 : | The petitioner is proved to have abandoned his job w.e.f. 20.5.1997. The termination of his services by the respondent w.e.f. June 21, 2000 was not unlawful. |
| Issue 2 : | He is not entitled to any relief.   |
| Issue 3 : | The claim petition is though not maintainable, the same is not barred by time.  |
| Relief. : | The petition dismissed per operative part of the award.   |

#### REASONS FOR FINDINGS

##### ISSUE 1

7. The respondent's claim that the petitioner had without giving intimation to the department abandoned the job on his own in 1997, to my thinking, appears to be having a ring of truth in view of the materials on record. The respondent's witness Yashpal Thakur, then Assistant Engineer, HPSEB, Sub Division, Badharbar, inter alia deposed as RW1:

**“.....I am conversant with the facts of this case. The petitioner was engaged as casual Beldar under a specific scheme on 28.11.1994. He worked upto May 20, 1997, and during this period he used to remain absent on his own..... After 1997, the petitioner without informing the department abandoned the job on his own and thereafter did not turn up. The department had in writing asked him to join his duty, vide letter dated May 31, 1997 a copy of which is Ex. RW1/A. Thereafter the petitioner filed a petition in 2000, a copy whereof is Ex. RW1/B. He was re-engaged in accordance with the orders of the Court.....”**

8. This deposition, to my mind, does not appear to be far from truth in view of the documentary evidence led by the respondent. The mandays chart Ex. RW1/C the correctness of which is not disputed by the petitioner, is indicative of his having worked with the respondent in two spells of time; One, during the period from 28.11.1994 to May 20, 1997, and the other, during the period from May 20, 2000 to June 20, 2000. The letter dated May 31, 1997, a copy of which is Ex. RW1/A, would reveal that the petitioner absented from work w.e.f. May 20, 1997 onwards without intimation to his superiors. By this letter, which was despatched on May 31, 1997, vide the relevant extract of the Despatch Register Ex. RW1/E, the Assistant Executive Engineer, Electrical Sub Division, HPSEB, Badharbar, directed the petitioner to join his duty and „submit the reason of wilful absence immediately.. The petitioner, it appears, did not respond to the letter nor did he join his duty. There being no reason to discredit the said letter Ex. RW1/A and the aforementioned mandays chart Ex. RW1/C, I have no hesitation in holding that the petitioner had abandoned the job on his own after May 20, 1997.

9. However, about two years later, that is, in 1999, he filed before the H.P. Administrative Tribunal an application (OA No.324/1999). The said Tribunal allowed the application by its order dated May 10, 2000 Ex. RW1/B which in its material part reads:

**“Learned counsel for the parties represent that the present O.A. is covered by the decision of OA(M) 198/98 and OA(M) 197/98 decide on 24.4.1999. That being so, the respondents are directed to re-engage the applicant in the same place from where his services were dis-engaged. The applicant, in that event, shall not be entitled for back wages. However, the period of absence between his dis-engagement and re-engagement would be counted for seniority.”**

10. It was in compliance with these orders that the respondent re-engaged the petitioner. However, by a one month.s notice dated June 19, 2000 Ex. RW1/D, the respondent terminated the services of the petitioner. The said notice in its material part reads:

**“Since the work against which you have been engaged are going to be completed and there is no another work against which your services can be continued further, hence in view of non availability of work your services is not longer required. You are hereby given one month notice of retrenchment of services under standing order clause 14 which will commenced on 21.6.2000 to 20.7.2000.”**

11. Ld. counsel for the petitioner strenuously argues that in view of the H.P. Administrative Tribunal.s orders dated May 10, 2000 whereby not only was the petitioner ordered to be re-engaged but the period of his absence „between his dis-engagement and re-engagement. was also ordered to be counted towards seniority, his client is to be considered in continuous service right from the date of his initial engagement as daily waged Beldar (November 28, 1994). This contention, to my thinking, appears to be ill conceived. No doubt the H.P. Administrative Tribunal by its orders aforementioned ordered the period between the petitioner.s dis-engagement and re-engagement to be counted towards his seniority, but by no stretch of reasoning can this order be interpreted to mean that the petitioner is to be considered in continuous service from the date of his initial engagement (November 28, 1994). The expression “continuous service” is defined under Section 25-B of the Act, which its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

12. The petitioner.s allegation that the respondent had given fictional breaks in his service, to my mind, does not appear to have been substantiated. He to establish this allegation ought to have adduced in evidence copies of such muster rolls as may be indicative of fictional breaks having been given in his service. But he having failed so to do, I am not disposed to hold his allegation to have been substantiated. More so, in view of his failure to particularise the periods of the alleged fictional break in his service, and the respondent.s evidence which is demonstrative of his having remained absent from work from time to time.

13. Nowhere in his pleadings or evidence did the petitioner allege the respondent to have terminated his services on May 20 or 21, 1997, even though he claimed to have preferred before the H.P. Administrative Tribunal an application (OA NO.324/1999) laying challenge to his dis-engagement. I have already held him to have abandoned the job on his on after May 20, 1997. In view of this finding of mine and the petitioner's failure to establish his allegation of fictional breaks in his service, his counsel's contention that his client is to be considered in "continuous service" from the date of his initial engagement in view of the H. P. Administrative Tribunal's orders dated May 10, 2000, merits rejection and is rejected.

14. Now the question: Whether in terminating the services of the petitioner by a „one month's notice. dated June 19, 2000 Ex. RW1/D (also Ex. RW1/F), the respondent violated the provisions of Section 25-F or 25-G of the Act. The answer, to my mind, is in the negative in view of the materials on record. Section 25-F reads:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. There is nothing suggestive of the petitioner having remained in continuous service for one year, or say his having completed 240 days during the period of 12 calendar months preceding the date of termination of his services (in the reference, the date of termination of his services is stated to be June 21, 2000. However, it ought to be July 20, 2000 in view of the notice dated June 19, 2000 Ex. RW1/D). The respondent was therefore not obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged under the abovementioned provisions of section 25-F of the Act. So, the said provisions cannot be said to have been violated.

16. But the provisions of Section 25-G of the Act also, to my thinking, do not appear to have been violated by the respondent. The said Section provides:

**“25-G. Procedure for retrenchment. – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. Although the petitioner in his affidavit Ex. PW1/A alleged that “the juniors namely Krishan Chand, Ranjit Singh, Bansilal, Yashpal etc. were engaged, continued & allowed to complete 240 days”, he in substantiation of this allegation did not choose to adduce in evidence the seniority list or such other document as may show that the said workmen were junior to him and retained in service at the time his services were dispensed with by the respondent by the notice aforementioned Ex. RW1/D. It is therefore difficult to hold that in terminating his services, the respondent had violated the provisions of Section 25-G of the Act.

18. As for the allegation of violation of the provisions of Section 25-H of the Act, the same also does not appear to have been substantiated, because there is no plausible material to show that the respondent had engaged some workmen after the termination of services of the petitioner.

19. The upshot therefore is that in dispensing with the services of the petitioner, the respondent did not violate any provision of the Act. In other words, the termination of services of the petitioner by the respondent was not improper and unjustified. The issue under discussion is accordingly held against the petitioner and in favour of the respondent.

## ISSUE 2

20. In view of what has been held under the foregoing issue, the petitioner is not entitled to any relief. The issue on hand is held accordingly.



## ISSUE 3

21. As no time limit is prescribed by law for raising an industrial dispute, the respondent.s claim that the petition is barred by time, is not tenable. But this observation of mine notwithstanding, the claim petition is not maintainable in view of what has been held under the above issue 1. The issue on hand is held accordingly.

## RELIEF

22. Judged in the light of my findings on the issues above, particularly issue 1, the petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 20th day of January, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 658/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Prem Chand S/o Shri Gurdev, R/O Village Lawan Pur, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

## Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Prem Chand S/o Shri Gurdev by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful

relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? . . .OPP
2. Whether the petition is not maintainable, as alleged. . .OPR
3. Whether the petition suffers from the vice of delay and laches. . .OPR
4. Whether the petitioner is guilty of suppressio veri. . .OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. . .OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

## REASONS FOR FINDINGS

## ISSUE 1

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of

HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.....

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified

authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that

**establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## ISSUE 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## ISSUE 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9320 dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy. D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

## ISSUE 4

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

## ISSUE 5

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P. (CAMP AT BILASPUR)**

Ref No. : 168/2006

Date of Institution : 4.12.2006

Date of decision : 21.1.2009

Shri Prem Sukh S/o Shri Nika Ram, Village Bhaur, P.O. Kanaid, Tehsil, Sunder Nagar, H.P.

..Petitioner.

*Versus*

1. The Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P.

2. The Technical Officer (Tassar) Sericulture Division, Mandi, H.P.

..Respondents.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. R.K. Raghu, Adv. Vice

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether the action of the (1) Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P. (2) The Technical Officer (Tassar) Sericulture Division, Mandi, H.P. to give break in service to Shri Prem Sukh S/o Shri Nikka Ram workman during his service period time and again and finally terminated w.e.f. 09.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondents as daily waged Beldar in 1994, and that he worked as such upto July 20, 2004. Thereafter the respondents suddenly terminated his services orally without giving him an opportunity of being heard. Claiming to have worked for 240 days during each calendar year, the petitioner alleged that the respondents, who had been giving fictional breaks in his service, never allowed him to complete 240 days in any calendar year, and that he having not been served with any notice before termination of his services, the respondent had violated the provisions of Section 25-F of the Act, 1947 (the Act, for short). The respondents, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time of his retrenchment. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act. The petitioner therefore prayed for a direction to the respondents to re-engage him in the same capacity as in which he was working at the time of termination of his services. He also prayed for a direction to the respondents to pay him full back-wages and count the “intervening period between re-engagement and dis-engagement” towards his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged Beldar in 1994, but refuted his allegation of fictional breaks. The petitioner.s allegation that his services were terminated on July 20, 2004, was also repudiated by the respondents. Claiming the petitioner to have been engaged as against a seasonal work, which was purely of temporary nature, the respondents averred that he had worked only for 13 days in 1994 and thereafter never completed 240 days in any year, and that he did not turn up after July, 2004. Refuting the petitioner.s allegation that certain workers junior to him, were retained and working in the department, the respondents averred that “no junior persons to the applicant has ever been engaged or allowed to be continued by the respondents, as alleged rather all those who are working in the unit are seniors to the applicant.” On the basis of these averments, the respondents prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. Claiming to have worked for 56 days in 1994, the petitioner alleged that the mandays chart prepared by the respondents was wrong, and that certain workers junior to him were still working in the respondents. department.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondent had been giving fictional breaks in the petitioner.s service. If so, to what effect? ..OPP.



2. Whether the termination of services of the petitioner by the respondents is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to? ..OPP.

3. Whether the claim petition is not maintainable? ..OPR.

4. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Issue 2 : Yes. He is entitled to the relief as mentioned under this issue.

Issue 3 : No

Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. The respondents. claim in their joint reply that the petitioner was engaged as against a seasonal work, which was purely of a temporary nature, to my thinking, does not appear to be having a ring of truth in view of the materials on record. Nowhere in his affidavit Ex. RW1/A or cross-examination as RW1 did the respondents. witness Piar Singh, Technical Officer (Tassar) Sericulture Department, Mandi, maintain that the petitioner was engaged as against a seasonal work. Also, the mandays Chart (Annexure R-1) produced by the respondents is not indicative of the petitioner having been engaged as against a seasonal work. The respondents. claim that the petitioner was engaged as against a seasonal work cannot therefore be taken without a pinch of salt.

7. But the petitioner.s allegation that the respondents had been giving fictional breaks in his service, also, to my mind, does not ring true for want of plausible evidence. He in his affidavit Ex. PW1/A inter alia deposed:

**“Moreover the respondent No.3 willfully and intentionally did not allow the applicant to complete 240 days initially upto 1997 after that applicant has completed 240 days, but the mandays chart has been prepared arbitrarily as no month wise mandays chart has been given as applicant has worked for whole of the year so the termination order is void, abinitio.....”**

8. This deposition, to my mind, appears to be far from truth, for the mandays chart is indicative of his having worked for 13, 80, 90, 161, 156, 190, 168, 182, 202, 168, and 74 days during the years 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004.

9. The petitioner.s allegation that the mandays chart has been prepared arbitrarily, and that the respondent 3 (respondent 2 in the reference) had not allowed him to complete 240 days in any calendar year cannot be accepted, because no such suggestion was put to the latter during his cross-examination RW1 as may show that he had prepared the mandays chart arbitrarily and not allowed the petitioner to complete 240 days in any calendar year. The allegation of fictional breaks cannot therefore be said to have been substantiated. The issue under discussion is accordingly held in the negative.

##### *Issue 2:*

10. The petitioner in his affidavit Ex. PW1/A deposed that he was engaged by the respondent 3 (respondent 2 in the reference) in December, 1994, and that he worked upto July 20, 2004 when all of a sudden his services were orally terminated by the respondents. This deposition of his having not specifically been challenged during his cross-examination by the respondents deserves acceptance and is accepted. The respondents. claim in their joint reply that the petitioner had abandoned the job after July, 2004, is therefore nothing but falsity. More so, when they did not choose to adduce in evidence such muster roll or any other document as may show the petitioner to have absented from work or abandoned his job after July, 2004.

11. The petitioner.s allegation that in terminating his services, the respondents had violated the provisions of Section 25-F of the Act, to my mind, does not appear to be tenable, because the materials on record are demonstrative of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment.

12. However, in terminating the services of the petitioner, the respondents appear to have violated the provisions of Section 25-G of the Act, which reads:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

13. The petitioner in his affidavit Ex. PW1/A deposed that the workmen namely Goverdhan Singh, Bimla Devi, Uttam Chand, Mahant Ram, Nilima, Hans Raj and Rattan, who were junior to him, were still working at Pandoh, Nagwain, Mumail, Mohin and Mandi. This claim of the petitioner having not specifically been disputed during his cross-examination by the respondents appears to be true. More so, when the seniority list Ex. RA adduced in evidence by the respondents is also indicative of the said workmen being junior to the petitioner and their having been retained in service at the time of termination of his services. The respondents are therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. In view of the respondents having been found to have violated the provisions of Section 25-G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment (July 20, 2004). However, he is held not entitled to back-wages, because his pleadings as also the evidence led by him are non-existent in such averments as may show that he was not gainfully employed after his retrenchment. The issue under discussion is held accordingly.

*Issue 3:*

14. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is held accordingly.

#### RELIEF

15. Judged in the light of my findings on the issues above, particularly issue 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services (July 20, 2004). Besides, he is held entitled to continuity of service from the date of his retrenchment. He is, however, held not entitled to any back-wages. The respondents are directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 610/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Punnu Ram S/o Shri Hirda Ram, Village & P.O. Baradta, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Punnu Ram S/o Shri Hirda Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.

- |  |        |
|--|--------|
| 2. Whether the petition is not maintainable, as alleged                                      | OPR.   |
| 3. Whether the petition suffers from the vice of delay and laches                            | ..OPR. |
| 4. Whether the petitioner is guilty of suppressio veri                                       | ..OPR. |
| 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. | ..OPR. |
| 6. Relief.   |        |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means.—**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof.—**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner.s pleadings being non-existent in his

allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajai Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1090/2007-9372, dated 25.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.



## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 106/2007  
Date of Institution : 7.9.2007  
Date of decision : 31.3.2009

Shri Raj Kumar S/o Shri Tulsi Ram, Vill. Saul, P.O. Khural, Tehsil Sunder Nagar, District Mandi, H.P.

..Petitioner.

*Versus*

Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Raj Kumar S/o Shri Tulsi Ram workman by the Divisional Forest Officer, Wild Life Division, Kullu, District Kullu, H.P. w.e.f. June, 2003 without complying the provisions of the Industrial Disputes Act, 1947 whereas junior to him are retained by the employer is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in the month of January, 1998, and that he worked as such in Wild Life Division, Kullu until September, 2003. His services were, however, terminated by the respondent w.e.f. September, 2003 without giving him month.s notice and paying him retrenchment compensation as envisaged under Section 25-F of the Act (the Act, for short). Claiming to have never absented, from work, the petitioner further averred that during the period of his employment, the respondent had been giving fictional breaks in his service, even tough there was availability of work and funds. In terminating the services of the petitioner, the respondent, it is further averred, also violated the principle of „Last Come First Go. as envisaged under Section 25-G of the Act, because the workmen namely Chander, Brij Lal, Santosh Kumar, Salig Ram and others, who were junior to him, were retained in service at the time his services were dispensed with. Besides, the respondent violated the provisions of Section 25-N of the Act, because no prior permission for termination of the services of the petitioner was obtained from the appropriate Government nor was he paid retrenchment compensation. It is also averred that the respondent had after the petitioner.s retrenchment engaged new workers on daily wages basis without giving the petitioner an opportunity to offer himself for re-employment and thus violated the provisions of Section 25-H of the Act as well. The petitioner therefore prayed

for a direction to the respondent to reinstatement him with full back-wages, continuity of service and other consequential service benefits. He also prayed for a direction to the respondent to take into account the period of break in his services towards continuity of service.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in the month of January, 1998, but denied having terminated his services from September, 2003 unlawfully. Claiming the work of his department to be of a seasonal nature, the respondent averred that the petitioner was engaged as casual worker subject to availability of works/funds and that he had worked intermittently and only for 63 days in 1998. Denying having given fictional breaks in the services of the petitioner, the respondent further averred that the petitioner had worked intermittently "depending upon the availability of funds/works" upto August, 2007 whereafter he on his own did not turn up for work. No workman junior to the petitioner, according to the respondent, was retained in service nor was any new worker engaged on muster roll basis after the petitioner abandoned the job on his own. In view of the seasonal nature of the work for which the petitioner was engaged as casual worker subject to availability of work and funds, no provision of the Act, according to the respondent, can be said to have been violated. More so, when, he on his own did not turn up for work for August, 2007. It is also averred that the petitioner is guilty of suppressio veri and the petition not maintainable in the present form.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination by:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? ..OPP.
2. Whether the petitioner is guilty of suppressio veri. ..OPR.
3. Whether the claim petition is not maintainable. ..OPR.
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : The respondent is not proved to have terminated the services of the petitioner w.e.f. June, 2003 as mentioned in the Reference. He is therefore not entitled to the relief he prayed for.
- Issue 2 : Yes
- Issue 3 : Yes.
- Relief. : Petition dismissed per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. In the Reference, which appears to have been based on the Conciliation Officer-cum-Labour Inspector's report no. 696-97 dated December 31, 2005, services of the petitioner are stated to have been terminated w.e.f. June, 2003. But nowhere in his statement of claim did the petitioner allege that his services were terminated w.e.f. June, 2003. What is inter alia averred by him is that he was engaged by the respondent as daily waged Beldar in the month of January, 1998, and that his services were illegally terminated by the respondent from September, 2003. But belying his claim that his services were terminated from September, 2003, the petitioner in paragraph 1 of his affidavit Ex. PW1/A, however, maintained that he had continuously worked upto September, 2003. In paragraph 8 of his affidavit, he, however, belied even this claim of his by stating that his services were terminated in the month of/from June, 2003. But the materials on record are not demonstrative of his services having been terminated with effect from June, 2003. The mandays chart Ex. PW1/E the correctness of which is not disputed by the petitioner, is indicative of his having worked for 109, 157, 121, 240 and 303 days in 1998, 1999, 2000, 2001 and 2002 respectively and 31, 27, 31, 30, 31, 30, 12, 26 and 4 days in the months of January, February, March, April, May, June, July, August and September, 2003 respectively. In view of this document, the respondent's denial of having terminated the services of the petitioner and the latter's inconsistent stand as to the date of termination of his services, I have no hesitation in holding that his services were not terminated with effect from June, 2003, not to speak of the alleged illegality in the termination of his services w.e.f. the said point of time as mentioned in the Reference. He is therefore not entitled to the relief he prayed for. The issue under discussion is accordingly held against him and in favour of the respondent.

*Issue 2:*

8. In view of what has been observed under the foregoing issue, the petitioner is decidedly guilty of suppressio veri. The issue on hand is therefore held in favour of the respondent and against the petitioner.

*issue 3:*

9. In view of my findings on the above issue 1, the petition is not maintainable. The issue on hand is therefore held in favour of the respondent and against the petitioner.

#### RELIEF

10. Judged in the light of my findings on the issues above, particularly issue 1, the claim petition fails and is hereby dismissed. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P. (CAMP AT BILASPUR)

Ref No. : 94/2006  
Date of Institution : 30.8.2006  
Date of decision : 21.1.2009

Shri Raj Kumar S/o Shri Bhagat Ram, Village Dadaur, P.O. Dhaban, Tehsil Sadar, District Mandi, H.P.

*..Petitioner.*

#### *Versus*

1. The Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P.
2. The Technical Officer (Tassar) Sericulture Division, Mandi, H.P.

*..Respondents.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. L.B. Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether the action of the (1) Deputy Director of Industries (Sericulture) Palampur, District Kangra, H.P. (2) The Technical Officer (Tassar) Sericulture Division, Mandi, H.P. to give break in service to Shri Raj Kumar S/o Shri Bhagat Ram workman during his/her service period time and again and finally terminated w.e.f. 09.06.2004 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondents as daily waged Beldar on March 16, 1993, and that he worked as such upto July 20, 2004. Thereafter the respondents suddenly terminated his services orally without giving him an opportunity of being heard. Claiming to have worked for 240 days in each calendar year, the petitioner alleged that the respondents, who had been giving fictional breaks in his service, never allowed him to complete 240 days in any calendar year, and that he having not been served with any notice before termination of his services, the respondent had violated the provisions of Section

25-F of the Act, 1947 (the Act, for short). The respondents, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time of his retrenchment. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act. The petitioner therefore prayed for a direction to the respondents to re-engage him in the same capacity as in which he was working at the time of termination of his services. He also prayed for a direction to the respondents to pay him full back-wages and count the "intervening period between re-engagement and dis-engagement" towards his seniority.

3. The respondents in their joint reply admitted the petitioner's claim of having been engaged as daily waged Beldar on March 16, 1993, but refuted his allegation of fictional breaks in his service. The petitioner's allegation that his services were terminated on July 20, 1994, was also repudiated by the respondents. Claiming the petitioner to have been engaged as against a seasonal work, which was purely of temporary nature, the respondents averred that he had worked only for 4 days in 1993 and thereafter never completed 240 days in any year, and that he did not turn up after July, 2004. Refuting the petitioner's allegation that certain workers junior to him were retained and working in the department, the respondents averred that "no junior persons to the applicant has ever been engaged or allowed to be continued by the respondents, as alleged rather all those who are working in the unit are seniors to the applicant." On the basis of these averments, the respondents prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. Claiming to have worked for 56 days in 1994, the petitioner alleged that the Mandays Chart prepared by the respondents was wrong, and that certain workers junior to him were still working in the respondents' department.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether affording to breaks in service of the petitioner by the respondent and ultimately terminating him is legal and justified? ..OPP.
2. If the above issue is proved in the affirmative, what relief the claimant is entitled to? ..OPR.
3. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Issue 2 : Yes. He is entitled to the relief as mentioned under this issue.

Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. The respondents' claim in their joint reply that the petitioner was engaged as against a seasonal work, which was purely of a temporary nature, to my thinking, does not appear to be having a ring of truth in view of the materials on record. Nowhere in his affidavit Ex. RW1/A or cross-examination as RW1 did the respondents' witness Piar Singh, Technical Officer (Tassar) Sericulture Department, Mandi, maintain that the petitioner was engaged as against a seasonal work. Also, the mandays chart produced by the respondents is not indicative of the petitioner having been engaged as against a seasonal work. The respondents' claim that the petitioner was engaged as against a seasonal work cannot therefore be taken without a pinch of salt.

7. But the petitioner's allegation that the respondents had been giving fictional breaks in his service, also, to my mind, does not ring true for want of plausible evidence. He in his affidavit Ex. PW1/A inter alia deposed:

**"Moreover the respondent No.3 willfully and intentionally did not allow the applicant to complete 240 days initially upto 1997 after that applicant has completed 240 days, but the mandays chart has been prepared arbitrarily as no month wise mandays chart has been given as applicant has worked for whole of the year so the termination order is void, abinitio....."**

8. This deposition, to my mind, appears to be far from truth, for the mandays chart is indicative of his having worked for 4, 34, 117, 93, 163, 158, 190, 168, 182, 198, 165 and 75 days during the years 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, 2001, 2002, 2003 and 2004 respectively.

9. The petitioner's allegation that the mandays chart has been prepared arbitrarily, and that the respondent 3 (respondent 2 in the reference) had not allowed him to complete 240 days in any calendar year, cannot be accepted, because no such suggestion was put to the latter during his cross-examination RW1 as may show that he had prepared the mandays chart arbitrarily and not allowed the petitioner to complete 240 in any calendar year. The allegation of fictional breaks cannot therefore be said to have been substantiated. The issue under discussion is accordingly held in the negative.

*Issue 2:*

10. The petitioner in his affidavit Ex. PW1/A deposed that he had worked upto July 20, 2004 when all of a sudden his services were orally terminated by the respondents. This deposition of his having not specifically been challenged during his cross-examination by the respondents deserves acceptance and is accepted. The respondents' claim in their joint reply that the petitioner had abandoned the job after July, 2004, is therefore nothing but falsity. More so, when they did not choose to adduce in evidence any such muster roll or other document as may show that the petitioner absented from work as abandoned the job after July 20, 2004.

11. The petitioner's allegation that in terminating his services, the respondents had violated the provisions of Section 25-F of the Act, to my mind, does not appear to be tenable, because the materials on record are not demonstrative of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment.

12. However, in terminating the services of the petitioner, the respondents appear to have violated the provisions of Section 25-G of the Act, which reads:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

13. The petitioner in his affidavit Ex. PW1/A deposed that the workmen namely Goverdhan Singh, Bimla Devi, Uttam Chand, Mahant Ram, Nilima, Hans Raj and Rattan, who were junior to him, were still working at Pandoh, Nagwain, Mumail, Mohin and Mandi. This claim of the petitioner having not specifically been disputed during his cross-examination by the respondents appears to be true. More so, when the seniority list Ex. RW1/A adduced in evidence by the respondents is also indicative of the said workmen being junior to the petitioner and their having been retained in service at the time of termination of his services. The respondents are therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. In view of the respondents having been found to have violated the provisions of Section 25-G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment (July 20, 2004). However, he is held not entitled to back-wages, because his pleadings as also the evidence led by him are non-existent in such averments as may show that he was not gainfully employed after his retrenchment. The issue under discussion is held accordingly.

RELIEF

14. Judged in the light of my findings on the issues above, particularly issues 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services (July 20, 2004). Besides, he is held entitled to continuity of service from the date of his retrenchment. He is, however, held not entitled to any back-wages. The respondents are directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 21st day of January, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S. S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref. No. : 71/2007

Date of Institution : 2.6.2007

Date of decision : 31.12.2008

Shri Ram Chand S/o Shri Nek Ram, Village Bina, P.O. Kalohad, Tehsil Sunder Nagar, District Mandi, H.P.

..Petitioner.

*Versus*

1. Director of Agriculture, H.P. Shimla.
2. The Deputy Director of Agriculture, Mandi, District Mandi, H.P.
3. The Assistant Soil Survey Officer, Sunder Nagar, District Mandi, H.P.

..Respondents.

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Ram Chand S/o Shri Nek Ram workman by the Director of Agriculture, H.P. Shimla-5 (2) The Deputy Director of Agriculture, Mandi, District Mandi, H.P. (3) The Assistant Soil Survey Officer, Sunder Nagar, District Mandi, H.P. w.e.f. July, 1994 without complying the provisions of the Industrial Disputes Act, 1947 where as new persons have been appointed during the year, 2001 by the above employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as Junior Draughtsman on daily wages basis in the office of the Assistant Soil Survey Officer, Sunder Nagar in Mandi district in the month of October, 1987, and that he worked as such upto June 2, 1992. On June 3, 1992, the respondent 3 terminated the services of the petitioner, vide letter No.Agr. Estt. 92-76 dated June 3, 1992. Aggrieved, the petitioner approached the Himachal Pradesh Administrative Tribunal. On October 1, 1992, the said Tribunal granted stay orders on the basis of which the petitioner was allowed to continue in service till July, 1994. In that month, the Tribunal, however, vacated the stay orders. Claiming to have completed 240 days during the period of 12 calendar months preceding the date of his retrenchment in July, 1994, the petitioner averred that in dispensing with his services, the respondent violated the provisions of Section 25-F of the Industrial Disputes Act, (the Act, for short), for at the time his retrenchment no notice was given to him nor was he paid retrenchment compensation for the period from June 1992 to July 1994. Besides, the respondents violated the provisions of Section 25-H of the Act, because seven persons namely Joginder Singh, Krishan Dev, Kusum Lata, Vidya Sagar, Inder Singh, Surender Kumar and Niranjana Singh were appointed in the respondents. department as Junior Draughtsman in 2001 without giving the petitioner an opportunity to offer himself for re-employment. The petitioner therefore prayed for a direction to the respondents to reinstate him with full back-wages and continuity of service. He also prayed for a direction to the respondents to “give the employment to the applicant on the basis of person appointed in 2001 on regular pay scale to the post of JDM and pay him all arrear of payments and other consequential service benefits from the date the person appointed on regular basis.”

3. The respondents in their joint reply averred that the petitioner was engaged under U.S. Aid Project on daily wages basis, and that upon the project coming to an end on September 30, 1992, his services were dispensed with in accordance with law. It is averred that as one month's notice and retrenchment compensation were given to the petitioner at the time his services were dispensed with, the provisions of Section 25-F of the Act cannot be said to have been violated. Denying having violated the provisions of Section 25-H of the Act, the respondents further averred:

“.....The applicant was engaged under the U.S. Aid Project and the said project ended on 30.9.1992. Consequently his service was dispensed with in accordance with law. It is further submitted that the applicant was daily wages on particular project and his O.A. No. 1212/92 stand disposed off on merit on 26.5.1994. There was no direction for consideration or for his re-employment at all. Re-employment constituted a different cause of action even if reference is to be made to the valid termination and not otherwise. The applicant applied for the civil post advertised which was no relation on nuxes with the valid termination. It

cannot be described as a matter of incidental to. The daily paid labourer do not hold any civil post and cannot claim their appointment against any civil post as a matter of right. The applicant challenges/appointment of fresh appointee requisite in 2000-2001 who have been required after following procedure laid down in the rule and law and the same breath claiming re-employment of daily wages badly re-terminated/retranchment. Hence the claim of the applicant is illegal, unjust and against law & procedure.”

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. He averred that he was engaged under U.S. Aid Project on daily wages basis in the year 1987 and worked upto September 30, 1992. He later filed before the Himachal Pradesh Administrative Tribunal O.A. No.1212/1992; that stay orders were granted in his favour and that the O.A. was disposed of on May 26, 1994. On the same day (May 26, 1999) the respondent terminated his services without giving him one month.s notice and retranchment compensation. The petitioner.s services, it is further averred, were again terminated by the respondents in the month of July, 1994 without complying with the provisions of Section 25-F of the Act.

5. On the pleadings of the parties, my *Ld.* Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified? ..OPP.
2. If the above issue is proved in the affirmative, what relief of service benefit the petitioner is entitled to? ..OPP.
3. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : No  
 Issue 2 : He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 3 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. Recounting the material facts averred in the claim petition, the petitioner in his affidavit Ex. PW1/A deposed that he was engaged as junior Draughtsman/Tracer on daily wages basis in the office of Assistant Soil Survey Officer, Sunder Nagar in Mandi district in October, 1987, and that he worked as such upto June 2, 1994. On June 3, 1992, his services were terminated by the respondent 3, vide letter No. Agr. Estt. 92-76 dated June 3, 1992. This deposition of the petitioner having not been challenged during his cross-examination by the respondents deserves acceptance and is accepted.

8. The materials on record would reveal that aggrieved by his retranchment, the petitioner preferred before the H.P. Administrative Tribunal an application (O.A. No.1212/1992) on the basis of which stay orders were granted in his favour on October 1, 1992. Later the said Tribunal dismissed the petitioner.s application and vacated the stay orders, vide order dated May 26, 1994 Ex. RW1/D. The petitioner.s claim in his affidavit Ex. PW1/A that on the basis of the H.P. Administrative Tribunal.s stay orders dated October 1, 1992, he was allowed by the respondents to continue in service till July, 1994, and that on vacation of the stay orders his services were dispensed with in July, 1994, has not been disputed during his cross-examination by the respondents. The respondents. witness Tilak Raj, then Assistant Survey Officer, Sunder Nagar, inter alia testified as RW1:

“.... Ram Chand (petitioner) was employed in U.S. Aid Project, which had commenced in 1987. The petitioner was engaged as Tracer. The project came to an end on 30.9.1992 and the petitioner was paid retranchment compensation and one month.s salary, amounting to Rs.5436/- by way of cheque No. 805513 dated June 3, 1992 after being given a notice in May, 1992. A copy of the notice given to the petitioner is Ex. RW1/A. Before this, the petitioner had filed before the Himachal Pradesh Administrative Tribunal O.A. No.1212/1992, a copy of which is Ex. RW1/B. A copy of another O.A. (No.310/2003) preferred before the Tribunal is Ex. RW1/C. A copy of the order dated May 26, 1994 passed in O.A. No.1212/1992 is Ex. RW1/D. The project continued for a limited period, vide copy of the letter Ex. RW1/E. No provisions of the I.D. Act was violated by the respondents.”

9. During his cross-examination, this witness categorically admitted the petitioner's suggestions that no appointment letter was given when he (petitioner) was engaged as daily wages on muster roll basis; that for appointment as Tracer, „Draughtsman Civil. is an essential qualification; that the petitioner was a Junior Draughtsman; that on October 1, 1992, stay orders were granted by the Administrative Tribunal in favour of the petitioner in O.A. No.1212/1992, and that the petitioner was re-engaged in compliance with the orders of the Court. Having deposed so, Tilak Raj hastened to add that on vacation of the stay orders, May 26, 1994, the petitioner's services came to an end. The petitioner continued to work during the stay orders.

10. Now, what emerges from the abovediscussed evidence is that the petitioner, who admittedly in the cross-examination of the respondent's witness Tilak Raj (RW1) is holder of a draughtsman diploma, was engaged by the respondent as Junior Draughtsman/Tracer on daily wages basis in the office of Soil Survey Officer, Sunder Nagar in Mandi district in October, 1987. The work as against which he was engaged as Junior Draughtsman/Tracer was of an U.S.Aid project, which was completed by end of September, 1992, vide letter dated May, 20, 1992, a copy of which is Ex. RW1/E. The services of the petitioner were dispensed with by the respondent 3 on June 3, 1992, vide letter No. Agr. Estt. 92-76 dated June 3, 1992. There is no gainsaying fact that at the time of termination of his services on June 3, 1992, the petitioner was served with a prior notice in May, 1992 and paid retrenchment compensation and one month's salary, amounting to Rs.5436/-. However, aggrieved by the termination of his services the petitioner filed before the H.P. Administrative Tribunal an application (O.A. No.1212/1992) on the basis of which interim stay orders were granted in his favour on October 1, 1992. It was on the basis of these orders that he was re-engaged in the same capacity as in which he was working at the time of termination of his services on June 3, 1992. The interim stay orders aforementioned were, however, vacated by the Tribunal aforementioned, vide order dated May 26, 1994 EX. RW1/D, which in its material part reads:

“The respondents have taken a specific stand that during April/May, 1990 when survey/work under which the applicants were initially engaged i.e. U.S. Aid Project was completed, the Assistant Soil Survey Officer, Sundernagar retrenched the services of the applicants. In view of specific averments of the respondents that the applicants were engaged initially under U.S. Aid Scheme and the said scheme has been completed, the posts of the applicants are no longer under this project, which has come to an end. Hence, they are not entitled to serve under the said project. We seek further support from the order passed by the Apex Court in State of H.P. Vs. Sanjay Sharma & others in SLP(C) No. 13957 of 1993 decided on November 1, 1993 by the Hon.ble Supreme Court. In view of above, this application is rejected with no order as to costs. The stay granted on October, 1992 is hereby vacated.”

11. It was on vacation of the interim stay orders that the services of the petitioner were dispensed with in July, 1994. Admittedly in the cross-examination of the respondent's witness Tilak Raj (RW1), no notice or retrenchment compensation was given to the petitioner when he was removed from service in July, 1994 on vacation of the stay orders by the H.P. Administrative Tribunal.

12. Now the question that arises is; whether in the circumstances where the petitioner was engaged as daily waged Junior Draughtsman/Tracer in October, 1987 as against a project work which was time-bound; where his services were dispensed with on June 3, 1992 after he was served with a retrenchment notice and paid retrenchment compensation; where he was re-engaged on the basis of the interim stay orders dated October 1, 1992 passed by the H.P. Administrative Tribunal on his application (O.A. No.1212/1992), and where on vacation of the stay orders his services were terminated by the respondents in July, 1994, the respondents were obliged to comply with the provisions of Section 25-F of the Act at the time of termination of his services in July, 1994. The answer, to my thinking, is in the affirmative. The petitioner whose services undeniably stood terminated on June 3, 1992, was later re-engaged, though on the basis of the aforementioned interim stay orders passed by the H.P. Administrative Tribunal. So, on his re-engagement, it was fresh commencement of his service in the same capacity as in which he was working at the time his services were dispensed with on June 3, 1992. He in his affidavit Ex. PW1/A claimed to have completed 240 days during the period of 12 calendar months preceding the date of his retrenchment in July, 1994. This claim of his having not been disputed during his cross-examination by the respondents deserves acceptance and is accepted. Section 25-F of the Act provides:

**“25F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (i) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (ii) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days. average [pay for every completed year of continuous service] or any part thereof in excess of six months; and



(iii) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

13. In view of the petitioner having been re-engaged by the respondents as daily waged Junior Draughtsman/Tracer and his having completed 240 days during the period of 12 calendar months preceding the date of termination of his services in July, 1994, the respondents were enjoined upon by the abovementioned provisions of Section 25-F of the Act to give him one month's notice or pay him wages for the period of the notice along with retrenchment compensation. But the respondents having failed so to do decidedly violated the said provisions. So, the termination of the services of the petitioner by the respondent in July, 1994 was not proper and justified. The issues under discussion is accordingly held in favour of the petitioner and against the respondent.

*Issue 2:*

14. In view of my findings on the foregoing issue, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services in July, 1994. Besides, he is entitled to the benefit of continuity of service as daily waged Junior Draughtsman/Tracer from the date of his retrenchment in the said month. He is, however, held not entitled to back-wages because of his failure to lead such evidence as may show that he was not gainfully employed or that he remained idle after his retrenchment in July, 1994. The issue under discussion is held accordingly.

#### RELIEF

15. Judged in the light of findings on the issues above, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment in July, 1994. Besides, he is held entitled to continuity of service from the date on which his services were terminated in the said month. In view of the facts and circumstances of the case, he is, however, held not entitled to back-wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of December, 2008.

S. S. SEN,  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H. P.

Ref No. : 118/2005

Date of Institution : 2. 8. 2005

Date of decision : 28.2.2009

Shri Ram Saran S/o Shri Adam Ram, Vill. Samila, P.O. Seri-Kothi, Tehsil, Sundernagar, Distt. Mandi.

*..Petitioner.*

*Versus*

Divisional Forest Officer, Forest Division, Sundernagar, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. M.L. Sharma, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Ram Saran S/o Shri Adam Ram workman by the Divisional Forest Officer, Forest Division, Sundernagar, District Mandi, H.P. w.e.f. 1-4-2003 without**

**complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent in Kangoo Range of Sundernagar Forest Division in 2000, and that he worked as such till the end of March, 2003. On April 1, 2003, his services were suddenly terminated by the respondent. Claiming to have worked for more than 240 days in each calendar year, the petitioner averred that at the time his services were dispensed with no notice was given to him nor was he paid any retrenchment compensation as envisaged under Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of Section 25-G of the Act, because certain workmen, who were junior to him, were retained in service at the time his services were terminated. Claiming to have requested the respondent as also the Forest Range Officer concerned to re-engage him, the petitioner further averred that as his requests for re-engagement fell on a deaf ear, he served the respondent with a notice under Section 2-A of the Act on May 8, 2003, but without effect. Left with no option, he later raised an industrial dispute, which is encompassed in the reference in question. He prays for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prays for the grant of full back-wages and other consequential service benefits including continuity of service.

3. The respondent in his reply averred that the petitioner was engaged as a daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division in October, 2000 and dis-engaged on completion of the works in July, 2005. Disputing the petitioner's claim of having been dis-engaged in the year 2003, the respondent further averred that the petitioner had not completed 240 days in each calendar year except the year 2002; that the forestry works against which he was engaged was of a seasonal nature, and that he had worked upto July, 2005 intermittently keeping in view the availability of works and funds. There, therefore, exists no industrial dispute and the reference is not covered under the Act.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the services of the petitioner were terminated by the respondent on April 1, 2003.

..OPP.

2. If the above issue 1 is proved, whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?

..OPP.

3. Whether the petitioner was engaged as daily waged labourer for seasonal forestry works subject to availability of work and funds and dis-engaged on completion of the works as alleged

..OPR.

10. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No

Issue 2 : Issue 1 having not been proved, the petitioner is not entitled to any relief.

Issue 3 : No

Issue 4 : The petition dismissed per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division in 2000, is not disputed by the respondent. What is disputed by the respondent is his claim of having been retrenched w.e.f. April, 2003. The respondent's claim that the services of the petitioner were not terminated in April, 2003, to my thinking, appears to having a ring of truth in view of the materials on record. The petitioner in his affidavit Ex. PW1/A inter alia maintained that he had worked as daily waged Beldar in Kangoo Forest Range of Sundernagar Forest Division till the end of March, 2003, and that his services were terminated by the respondent orally w.e.f. April, 2003. But his claim of having worked „till the end of March, 2003. does not find assurance from the mandays chart Ex. RW1/B, which is indicative of his having not worked even for a single day in the month of March, 2003. Also, his claim that the respondent had terminated his services orally w.e.f. April, 2003, stands falsified by what he maintained in his cross-examination as PW1. He in his cross-examination as PW1 deposed that he had worked for 240 days every year from 2001 to 2005. If to go by this deposition of his, his claim that his services were terminated w.e.f. April, 2003 cannot be taken without a pinch of salt. More so, in view of the aforementioned mandays chart which is demonstrative of his having not worked even for a single day in the months of January, March,

April, May, June, August and December, 2003. In the mandays chart Ex. RW1/B, he is shown to have worked for 25, 5, 13, 15, 7, 23, 2, 17, 4, 9 and 11 days in the months of February, July, September, October and November, 2003, August, 2004 and January, February, March, July and November, 2005 respectively.

7. In view of the above, there is no escape from the conclusion that the petitioner has failed to substantiate his allegation that his services were terminated by the respondent w.e.f. April, 2003. The issue under discussion is therefore held in the negative.

*Issue 2:*

8. In view of the above issue 1 having not been proved, the petitioner is not entitled to any relief. The issue under discussion is held accordingly.

*Issue 3:*

9. In the respondent's reply as also in his affidavit Ex. RW1/A, the petitioner is stated to have been engaged as daily waged Mazdoor on muster roll basis for casual and seasonal forestry works in Kangoo Range of Sundernagar Forest Division during October, 2000. The respondent to establish this claim ought to have adduced in evidence the muster roll for the month of October, 2000, or any other document wherein the petitioner may have been shown to have been engaged for „seasonal forestry works., but he failed so to do. Also, the respondent to substantiate his claim that the services of the petitioner were dispensed with on completion of the work as against which he was engaged, ought to have led documentary evidence including the muster roll for the month of July, 2005, but he failed to do even this. It is therefore difficult to accept his claim that the petitioner was engaged for „casual and seasonal forestry works., and that his services were terminated on completion of the works in July, 2005. More so, in view of the seniority list Ex. RW1/C, which is indicative of certain workmen having worked for more than 240 days every calendar year from 1997 to 2006. Had the respondent been true in his claim that the petitioner was engaged as against seasonal forestry works, and that such works came to an end in July, 2005, certain workmen would not have been shown to have worked almost whole of the year during the calendar years from 1997 to 2006 in the seniority list Ex. RW1/C. The inescapable conclusion therefore is that the respondent's claim of having engaged the petitioner as against seasonal forestry works and terminated his services on completion of these works in July, 2005, is nothing but falsity. The issue under discussion is therefore held in the negative.

#### RELIEF

10. Judged in the light of my findings on the above issue 1, the claim petition fails and the petitioner is held not entitled to any relief. As a result, the reference is dismissed. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 28th day of February, 2009.

S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 633/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Ramesh Kumar S/o Shri Masadi Lal R/o Village Bahladai, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ....Respondent  
Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Ramesh Kumar S/o Shri Masadi Lal, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
  2. Whether the petition is not maintainable, as alleged. ..OPR.
  3. Whether the petition suffers from the vice of delay and laches. ..OPR.
  4. Whether the petitioner is guilty of suppressio veri. ..OPR.
  5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.
  6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:
- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-**

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the

specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (i) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (ii) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.



21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9900 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 20, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 621/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Rattan Chand S/o Shri Sher Singh, VPO Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Rattan Chand S/o Shri Sher Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of

the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

#### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

#### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the

head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's

retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1097/2007-9271, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated August 9, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a



period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 46/2001  
Date of Institution : 25.5.2001  
Date of decision : 31.3.2009

Sh. Roop Chand, s/o Shri Medu Ram, Village & P.O. Tulah, Tehsil Ladbharol, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

1. Secretary, Himachal Pradesh State Electricity Board, Shimla-4.
2. Executive Engineer, Himachal Pradesh State Electricity Board, Jogindernagar Division, Jogindernagar, Distt. Mandi, H.P.

*..Respondents.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. B.K. Sood, Adv.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of the workman Roop Chand by the employer, Executive Engineer, Himachal Pradesh State Electricity Board, Jogindernagar Division, Jogindernagar, without notice is lawful or unlawful under section 25(H) or 25(N) of the Industrial Disputes Act, 1947. If unlawful, what relief and service benefits the workman is entitled to”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the Executive Engineer, HPSEB Electrical Division, Joginder Nagar, District Mandi, H.P. (hereinafter referred to as the Respondent 2) as daily waged Beldar on muster roll basis in Makriri Sub Division of HPSEB Electrical Division, Joginder Nagar on February 15, 1995 and worked as such from February 25, 1995 to July 24, 1995. On July 25, 1995 his services were terminated by the respondent in violation of the provisions of Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946. Claiming to have been re-engaged by the respondent 2 as daily waged Beldar on muster roll basis in the aforesaid Sub Division on September 25, 1997, the petitioner further averred that on October 5, 1997, his services were again dispensed with by the respondent 2 orally. In terminating his services, the respondent 2 violated the principle of „Last Come First Go. as envisaged under Section 25G of the Industrial Disputes Act, 1947 (the Act, for short) because certain workers namely Partap Chand, Sanjay Kumar, Damodar, Ramesh Chand, Durga Dass, Ram Chander, Om Parkash, Prithi Chand, Rajmal, Ghanshyam Dass and Smt. Kanta Devi, who were junior to him (petitioner) were retained in service at the time of termination of his services. Besides, the respondent violated the provisions of Section 25-H of the Act, because he after terminating the services of the petitioner engaged fresh workers without giving the petitioner an opportunity to offer himself for re-employment. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service. He also prayed for the grant of other consequential service benefits.

3. Disputing the petitioner's claim of having been engaged as daily waged Beldar on February 15, 1995 and worked from February 25, 1995 to July 24, 1995, the respondents in their joint reply averred that he was first engaged as casual Beldar on March 13, 1995 in Makriri Sub Division of HPSEB Electrical Division, Joginder Nagar,

and that he worked under muster roll No.744 w.e.f. 25.2.1995 to 24.3.1995. In paragraph 2 of the reply, the respondents, however, further averred that "in fact the petitioner worked w.e.f. 13.3.95 to 14.7.1995 with certain willful absence and interruption and w.e.f. 14.7.1995 to 30.9.1997, the petitioner remain willfully absent". Claiming to have re-engaged the petitioner on October 1, 1997, vide muster roll no.262 for the period from 25.9.1997 to 24.10.1997, the respondents averred that this time he worked only for 10 days and abandoned the job on his own on October 15, 1997. Denying having violated the principle of „Last Come First Go. as envisaged under Section 25G of the Act, the respondents further averred that "the junior persons named S/Sh. Partap Chand, Ram Chander, Om Prakash, Prithi Chand, Raj Mal, Ghanshyam Dass and Kanta Devi have not been terminated as per Court order". The workers namely Pratap Chand and Davinder, according to the respondents, were casually engaged by the Assistant Engineer, HPSEB Electrical Sub Division, Makriri, in September, 1996 and February, 1997 respectively. It is also averred that no worker was engaged after the petitioner abandoned the job on October 15, 1997. In view of the abandonment by the petitioner of the job on his own, no provision of the Act or Clause of the Standing Orders, according to the respondents, can be said to have been violated. They therefore prayed for rejection of the petitioner.s claim.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the termination of services of the petitioner by the respondents is violative of Sections 25H and 25N of the I.D.Act, 1947. ..OPP.
2. Whether the petition is not maintainable in view of the preliminary objections. ..OPR.
3. Relief.

6. Be it stated that my Ld. Predecessor-in-office dismissed the claim petition chiefly on the grounds of delay and laches, vide award dated March 22, 2006. Aggrieved, the petitioner laid challenge to the award by preferring before the Hon.ble High Court of H.P. a writ petition (CWP No.577/2006). By its judgment dated November 21, 2007, the Hon.ble High Court accepted the writ petition, set aside the impugned award and remanded the matter to this Court for decision afresh.

7. For the reasons to be recorded hereinafter, my findings on the aforementioned issues are as under:

Issue 1 : Yes partly, because the respondent 2 is proved to have violated the provisions of Section 25H of the Act.  
 Issue 2 : No  
 Relief : Petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

8. Belying his claim of having been engaged by the respondent 2 as daily waged Beldar on February 15, 1995, the petitioner in his cross-examination as PW1 admitted the respondents. suggestion that he was for the first time engaged on muster roll basis for the period from March 13, 1995 to July 14, 1995. Having admitted the correctness of the muster rolls marked A to G which are indicative of his having worked intermittently during the period from March 13, 1995 to July 14, 1995, the petitioner admitted the respondents. another suggestion that he was again engaged as daily waged Beldar on October 1, 1997. The respondents. claim is that the petitioner had abandoned the job on his own on October 15, 1997. This claim, to my thinking, does not ring true in view of the materials on record. In the muster roll no.262 marked H (Ex.RW1/I) the petitioner is shown to have worked upto October 15, 1997 and absented from work thereafter. He denies having abandoned the job on his own. According to him, his services were dispensed with by the Assistant Engineer of Makriri Sub Division of HPSEB Electrical Division, Jogindernagar.

9. Placing heavy reliance on the aforementioned muster roll Ex. RW1/I, the respondents. counsel, on the other hand, contends with vehemence that this document being indicative of the petitioner having absented from work with effect from October 16, 1997, he can safely be said to have abandoned the job on that day. I am not impressed with this contention, because the absence from duty cannot be equated to abandonment of service. In this view I am fortified by the authority of the case titled Sita Ram vs. Labour Court, Patiala, and others, reported in Factories Journal Reports, Vol. 88, page 516. In that case, one of the issues framed by the Labour Court was: Whether the order of termination of services of the workman is justified and in order. The said Court while deciding this issue held that as the workman had absented from duty with effect from January 28, 1988, the management was justified in terminating

his services on March 25, 1988. It was concluded that the case of the workman was of abandonment of service and not retrenchment. Having referred to Section 2(oo) of the Act wherein is defined the expression "retrenchment", the Hon.ble High Court of Punjab and Haryana inter alia ruled:

"Absence from duty is not covered by any of the exceptions as enumerated in sub-clauses (a), (b), (bb) and (c). Absence from duty can at the most be held to mean to be a misconduct. The termination of services on the ground of misconduct could not be resorted to without holding an enquiry or complying with the provisions of the Act....."

The "absence" simpliciter by itself cannot be equated with abandonment of service. According to the dictionary, "absent" means "not present". It also means not being in a particular place at a certain time. The absence, therefore, means to be absent from specified position and not physically present. Abandoned on the other hand connotes a conscious decision of a person who relinquishes the position held by him. It means complete leaving of things as a final rejection of one's responsibilities. According to the Oxford Dictionary, it means, to let go, give up, renounce, leave off, to cease to hold, use or precise. The meaning of the word "abandoned" depends upon the context in which it, is intended to be used. The Labour Court appears to have completely ignored the settled provisions of law and passed a judgment merely on hypothesis...."

10. So, even if the respondents claim as to the petitioner's alleged absence from work is assumed to be true, the plea of abandonment of job can still not be said to have been established, because absence from duty indubitably amounts to misconduct, which calls for holding of a domestic inquiry by the employer in accordance with the principles of natural justice. In D.K. Yadav Vs. JMA Industries Limited, 1993 (1) Services Law Judgments page 221, the Hon.ble Apex Court inter alia observed:

**"Even executive authorities, which taken administrative action involving any deprivation of or restriction on inherent fundamental rights of citizen, must take care to see that justice is not only done. But manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness, or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice".**

11. The Hon.ble Supreme Court further held as under:

"It is well settled law that right to life enshrined under Art. 21 of Constitution would include right to livelihood. The order of termination of the service of an employee/workman visits with civil consequence of jeopardizing not only his livelihood but also career and livelihood of dependents. Therefore, before taking any action putting an end to the tenure of a workman fair play requires that a reasonable opportunity to put forth his case is given and in case of any misconduct i.e. absence from duty or unauthorised absence from duty, domestic enquiry be conducted complying with the principle of natural justice."

12. Since the respondent 2 failed to conduct domestic inquiry into the reasons for the petitioner's absence from work, the respondents claim that he had abandoned the job on his own on October 15, 1997, deserves to be negated. So, what stands established on record is that the respondent 2 had in fact terminated the services of the petitioner on October 15/16, 1997.

13. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**"25F. Conditions precedent to retrenchment of workmen**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment, compensation which shall be equivalent to fifteen days average [pay for every completed year of continuous service] or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government [or such authority as may be specified by the appropriate Government by notification in the Official Gazette].

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

**"25 (B). Definition of continuous service.- For the purposes of this Chapter,-**

- (1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer.-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case;
  - (b) for a period of six months, if the workman, during a period of six calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than.-
    - (i) ninety-five days, in the case of workman employed below ground in a mine; and one hundred and twenty days, in any other case...."

16. Nowhere in his affidavit or cross-examination did the petitioner claim to have worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The mandays chart Ex. RW1/A the correctness of which is not disputed by the petitioner, is also not indicative of his having worked for 240 days during the said period. The respondent 2 was therefore not obliged to give the petitioner one month's notice and pay him retrenchment compensation as envisaged under Section 25F of the Act.

17. As for the alleged violation by the respondent 2 of the provisions of Section 25N of the Act, the same also, to my mind, does not appear to have been established. This Section in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—(1)** No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

18. Since the petitioner is not proved to have been in continuous service for not less than one year, the respondent 2 was not obliged to obtain prior permission of the appropriate Government for his retrenchment. In terminating the services of the petitioner, the respondent 2 cannot therefore be said to have violated the provisions of Section 25N of the Act.

19. As for the allegation of violation of the provisions of Section 25H of the Act, the same, however, appears to have been established. The petitioner, as already observed, is proved to have been retrenched by the respondent 2 with effect from October 16, 1997. In Paragraph 3 of his affidavit Ex.P4, the petitioner inter alia maintained:

**“That after termination/retrenchment my service the Assistant Engineer have been appointed new persons namely Sh. Chuni Lal, Dalip Singh, Man Singh, Roop Lal, Ram Lal, Gopi Ram, Molak Ram and Davinder Singh in the years 1997 and 1998, but I have not recalled and not given me opportunity as senior workman...”**

20. This deposition having not been specifically challenged during his cross-examination by the respondents deserves acceptance. More so, in view of the respondents. suggestion put to the petitioner during his cross-examination that after his retrenchment some persons were engaged on the basis of Court orders and some on compassionate grounds.

21. As to the employment of some workmen allegedly on compassionate grounds, the respondents, however, did not choose to adduce any documentary evidence. It is therefore difficult to place reliance on their bald claim that employment of some persons after the petitioner.s retrenchment was on compassionate grounds.

22. Paragraph 4 of a letter dated November 1, 2000 Ex. P3 addressed to the Labour-cum-Conciliation Officer, Mandi Zone at Jogindernagar by the Senior Executive Engineer, Electrical Division, HPSEB, Jogindernagar, in response to the petitioner.s demand notice may be reproduced with advantage:

**“The averments made in this para are wrong and hence denied. In reply it is submitted that no such named persons Kail Dass and Om Parkash had ever worked under Electircal Sub-Division, HPSEB, Makriri but One Sh. Partap Chand was engaged during 10/96 when the applicant had already left the job during 15.7.95 and had worked in different spell whereas Sh. Partap Chand is working continuously and is still continue working as daily rated in the capacity of beldar. It is, therefore, stated that it is not possible to re-engage the applicant in the belated stage of time where there is no work and funds available with the replying respondent.”**

(emphasis supplied)

23. I have already negatived the respondents. allegation that the petitioner had abandoned the job on October 15, 1997. The respondents. above reply to the petitioner.s demand notice, is demonstrative of one Partap Chand having been engaged by the respondent 2 after the petitioner.s retrenchment. Section 25H of the Act provides:

**“25-H. Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen who offer themselves for reemployment shall have preference over other persons”.**

24. There is nothing to indicate that before taking Partap Chand into his employ the respondent 2 had given the petitioner an opportunity to offer himself for re-employment. The provisions of Section 25H of the Act can therefore safely be held to have been violated by the said respondent.

25. The upshot is that in terminating the services of the petitioner, the respondent 2 is not proved to have violated the provisions of Section 25F or 25N of the Act. He is, however, proved to have violated the provisions of Section 25H of the Act. The issue under discussion is held accordingly.

Issue 2:

26. In view of what has been held under the foregoing issue, the petition is decidedly maintainable to the extent the same relates to violation by the respondent 2 of the provisions of Section 25H of the Act.

## RELIEF

27. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. He is, however, held not entitled to any back-wages, because the materials on record are demonstrative of his having work for gain after his retrenchment. The respondents are directed to re-engage him within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 8/2005  
Date of Institution : 1.1.2005  
Date of decision : 27.12.2008

Shri Roshan Lal S/o Shri Munshi Ram, Village Kalthar, P.O. Bahanu, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, H.P.P.W.D., Division, Sarkaghat, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of the Shri Roshan Lal S/o Shri Munshi Ram, Ex. daily wages beldar by the Executive Engineer, H.P.P.W.D., Division, Sarkaghat, District Mandi, H.P. w.e.f. April, 2001 without complying the provisions of the Industrial Disputes Act, 1947 and whereas junior to him are retained by the department as alleged by the workman is proper and justified? If not, what relief of service benefits Shri Roshan Lal is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in February, 1994, and that his services were orally terminated on April 30, 2001. Alleging the respondent to have terminated his services without compliance with the provisions of Industrial Disputes Act, 1947 (the Act, for short), the petitioner further averred that his services were time and again interrupted by the respondent on account of lock out or cessation of work, which was not due to any fault on his part, and that the period of artificial breaks in his service was liable to be counted towards „continuous service. in view of the provisions of Section 25-B of the Act. The workmen namely Pyar Chand, Dhameshwar, Parma Ram, Kanshi Ram, Rajinder Pal, Balbir Singh, Satish Kumar and others, who according to the petitioner were junior to him, were retained in service by the respondent at the time of termination of his services. On the basis of these averments, the petitioner prayed for a

direction to the respondent to reinstate him with full back-wages and all other consequential service benefits. He also prayed for a direction to the respondent to count the period of artificial breaks towards continuous service and maintain a seniority list for the purpose of regularisation of his service as per the policy of the State Government.

3. Refuting the petitioner's allegation of artificial breaks in his service, the respondent in his reply averred that he (petitioner) was engaged as daily waged Beldar as against „seasonal works. in the month of February, 1994, and that his services were never terminated, but he had abandoned the job on his own in the month of May, 2001 and thus lost his seniority. Claiming the petitioner to have worked from 2/1994 to 31.5.2001 on the works of intermittent nature, the respondent further averred that the petitioner never completed 240 days „which is the criteria for continuance of service.. As for the petitioner's allegation that the workmen namely Pyar Chand, Dhmaswer, Parma Ram, Kanshi Ram, Rajinder Pal, Balbir Singh and Satish Kumar were junior to him and retained in service, the respondent's contention is that these persons having worked for 235 233, 245 ½, 313, 319, 296 and 269 days respectively during the year 2000 and being still in service are considered senior to the petitioner. Refuting the petitioner's allegation of violation of the principle of „last come first go., the respondent averred that this principle could not be said to have been violated in view of the petitioner having abandoned the job on his own. On the basis of these averments, the respondent prayed for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

4. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits the petitioner is entitled to? ..OPP.
5. Whether the respondent had been giving fictional breaks in the service of the petitioner ..OPP.
6. Whether the petitioner had abandoned the job on his own in May, 2001 ..OPR.
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, continuity of service and 50% back-wages as mentioned under this issue.
- Issue 2 : No
- Issue 3 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

Issues 1, 2 and 3:

7. These issues being inter-linked are taken up together.

8. The materials on record are indicative of the petitioner having been engaged by the respondent as daily waged Beldar in February, 1994 and his having worked as such upto May, 2001. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of termination of his services, the petitioner averred that during the period he remained in the employ of the respondent, artificial breaks were given in his service for no fault of his, and that the period of interrupted service was liable to be counted towards „continuous service. as defined under Section 25-B of the Act. But these averments, to my thinking, do not appear to have been established in view of the materials on record. The petitioner's claim of having completed 240 days during the period of 12 calendar months preceding the date of his retrenchment does not find assurance from the mandays chart Ex. RW1/A, which is indicative of his having worked for less than 240 days during the period from May, 2000 to May, 2001. It is therefore difficult to accept his claim. Also, his allegation of fictional breaks cannot be said to have been established, for in substantiation thereof, he did not choose to adduce in evidence such muster rolls or any other document as may show that fictional breaks were given in his service. Another reason why this allegation of his cannot be said to have been substantiated is his failure to particularise the periods of the alleged fictional breaks during the period he remained in the employ of the respondent. The issue 2 is therefore held against him and in favour of the respondent.

9. But the respondent's claim on the other hand that the services of the petitioner were never terminated but he had abandoned the job on his own in May, 2001, also, to my mind, goes without proof. The respondent to establish this claim ought to have brought on record the muster roll wherein the petitioner may have been marked absent or

shown to have abandoned the job in May, 2001. But the respondent having failed so to do, it is difficult to accept his claim. More so, in view of the evidence led by the petitioner, which is demonstrative of his services having been terminated by the respondent in May, 2001. The issue 3 is therefore held in favour of the petitioner and against the respondent.

10. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

11. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

12. As already deserved, the petitioner.s claim of having completed 240 days during the period of 12 calendar months preceding the date of his retrenchment in May, 2001 does not ring true in view of the mandays chart Ex. PW1/C, which is indicative of his having worked for less than 240 days during the period; May, 2000 to May, 2001. He having thus not remained in „continuous service for one year. as defined under Section 25-B of the Act, the respondent was not obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F Act. The said provisions cannot therefore be said to have been violated.

13. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable in view of the materials on record. Section 25-G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman.”

14. The petitioner in his statement as PW1 claimed the workmen namely Pyar Chand, Dhmaswer, Parma Ram, Kanshi Ram, Rajinder, Blabir Singh, Satish Kumar etc. to be junior to him and their having been made regular



employees. This claim of his having not been challenged during his cross-examination by the respondent deserves acceptance. More so, when the document Ex. RW2/A as also the seniority list of daily wagers of Baldwara Sub Division are indicative of the workmen namely Satish Kumar, Balbir Singh, Rajinder Kumar, Parma Ram, Kanshi Ram and Dhmaswar being junior to the petitioner. The aforementioned seniority list is demonstrative of the workmen namely Satish Kumar, Balbir Singh, Rajinder Kumar, Parma Ram, Kanshi Ram and Dhmaswar Singh having been retained in service at the time the services of the petitioner were dispensed with. In terminating the services of the petitioner, the respondent is therefore proved to have violated the abovementioned provisions of Section 25-G of the Act. The termination of services of the petitioner by the respondent was therefore unlawful. As a result, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment in May, 2001. In view of the facts and circumstances of the case, he, to my mind, is entitled to 50% back-wages from the date of termination of his services. The issue 1 is accordingly held in favour of the petitioner and against the respondent.

#### RELIEF

15. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service from the date of his retrenchment in May, 2001. He is also held entitled to 50% back-wages from the said date. The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 27th day of December, 2008.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

#### IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 640/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Roshan Lal S/o Shri Achhar Ram, Village Sihla, PO Risha, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

#### Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Roshan Lal S/o Shri Achhar Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.

## 6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

*issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of

power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter.**—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".**

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his

retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1013/2007-9368, dated 25.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a

period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 635/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Salig Ram S/o Shri Damodar Dass, R/o Village Madhwarda, P.O. Deo Baradla, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Salig Ram S/o Shri Damodar Dass by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the



petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### Issue 1:

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act.

What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.”-(1)** No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the

respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9317 dated 15.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab)1D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 166/2007

Date of Institution : 1.11.2007

Date of decision : 24.11.2008

Shri Sanjeev Kumar S/o Shri Uttam Singh, Village Sani Mohari, P.O. Althu, Tehsil Sadar, District Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P.

..Respondent.

For the Petitioner : Sh. N.L. Kaundal, vice AR

For the Respondent : Sh. Gaurav Sharma, vice Adv.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Sanjeev Kumar S/o Shri Uttam Singh workman by the Executive Engineer, HPSEB Electrical Division, Mandi, District Mandi, H.P. w.e.f. 1.1.2000 without complying the provisions of the Industrial Disputes Act, 1947, whereas junior to him were retained by the employer as alleged by the workman is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Beldar by the respondent on January, 1998, and that he worked as such in Saigloo Sub Division of Himachal Pradesh State Electricity Board (Electrical Division) upto December 31, 1999. On January 1, 2000, his services were terminated by the respondent by serving with him a notice dated December 20, 1999. Claiming to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service, the petitioner further averred that he having not been paid any compensation, the termination of his services was violative of the provisions of section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) as also the Industrial Employment (Standing Orders) Act, 1946 (Standing Orders, for short). In terminating his services, the respondent, according to the petitioner, also violated the provisions of section 25-G of the Act, because certain workers namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Shive Ram and others, who were junior to him, were retained at the time his services were dispensed with. Not only that, the respondent also violated the provisions of section 25-H of the Act, for, after the petitioner's retrenchment some persons were engaged without giving the petitioner an opportunity to offer himself for re-employment. Claiming to have visited the respondent's office a number of times after his removal from service, the petitioner averred that on being requested by him to re-engage him, the concerned official in the respondent's office gave an assurance that he would be called back in the job. The petitioner, however, kept on waiting for a call till February, 2005 whereafter he raised the industrial dispute, which later came to be referred to this Court for adjudication. On the basis of these averments, the petitioner prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. Disputing the petitioner's claim of having been engaged on January, 1998, the respondent in his reply averred that he (petitioner) was engaged as beldar on daily wages basis as against a specific construction work on January 25, 1998, and that he had worked upto December 31, 1999 with certain interruptions/breaks caused on account of his wilful absence from work. Claiming to have told the respondent at the time of his engagement as casual beldar that he was being engaged as against a specific construction work, and that his services would automatically come to an end on completion of the work, the respondent further averred that his services having been dispensed with on completion of the work, no provision of the Act was violated. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date on which his services were dispensed with, the respondent averred that he having not completed 240 days during the period he remained in his employ, he was not required to be served with a notice as envisaged under Section 25-F of the Act and the provisions of this Section cannot therefore be said to have been violated. As to the petitioner's allegation that certain persons namely Uma Devi, Jagdish, Kaul Singh, Ramesh, Pawan, Shive Ram and others, who were junior to him, were retained at the time of his retrenchment, the respondent's contention is that these persons, who were also engaged as casual beldar for execution a specific work, were also removed from service on completion of the work, and that they were later re-engaged in

obedience to an order dated October 8, 1999 of the Himachal Pradesh Administrative Tribunal. The petitioner's claim that after his removal from service he had visited the respondent's office, is also refuted by the respondent. It is averred that at no point of time did the petitioner visit the respondent's office nor did he make any representation after his removal from service, and the petition is therefore barred by time. As for the petitioner's allegation of violation of the Standing Orders, the respondent's contention is that this allegation is also unfounded and baseless, because the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. The respondent's other contentions relate to estoppel and maintainability of the petition.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation the petitioner is entitled to? ..OPP.
2. Whether the petition suffers from the vice of delay and laches. ..OPR.
3. Whether the petitioner is estopped from filing the present petition by his act and conduct ..OPR.
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 2 : No  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. Disputing the petitioner's claim of having been engaged on January, 1998, the respondent averred that he (petitioner) was engaged as daily waged beldar on January 25, 1998, and that he had worked as such upto December 31, 1999. This averment having been admitted by the petitioner to be true in his cross-examination as PW1 deserves acceptance.

8. Ld. counsel for the respondent contends that the petitioner was engaged as against a specific work, his removal from service on completion of the work did not amount to retrenchment as defined under clause (oo) of Section 2 of the Act. But this contention, to my thinking, appears to be ill conceived in view of the materials on record. The petitioner in his cross-examination as PW1 categorically denied the respondent's suggestion that at the time of his employment he was told that he was engaged as against a temporary work, and that his services would be deemed to have come to an end on completion of the work started under a scheme. The respondent's witness T.K. Sharma, then Assistant Engineer in Saigloo Sub Division of HPSEB, though in his examination-in-chief as RW1 maintained that the petitioner was engaged in a specific work, and that he was told that his service would come to an end on completion of the work, he in his cross-examination expressed his inability to furnish such proof as may show that the petitioner was engaged in a specific scheme work. Having deposed so, he, however, hastened to add that the factum of the petitioner having been engaged in a specific scheme was shown in the muster roll. But the muster roll, which would have constituted a vital piece of evidence in substantiation of the respondent's claim, having not been brought on record, it is difficult to hold that the petitioner was engaged in a scheme or as against a specific work.

9. But even if it is assumed that the petitioner was engaged in a scheme or as against a specific work, there is no plausible material to show that his employment came to an end simultaneously with the termination of the scheme or completion of the work.

10. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**



11. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

- “1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of retrenchment. dehors the reason for termination. To be excepted from within the meaning of retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of retrenchment.”
2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-
  - (i) that the workman was employed in a project or scheme of temporary duration;
  - (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
  - (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
  - (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.”

12. The respondent having failed to satisfy these conditions, the termination of services of the petitioner, to my thinking, decidedly amount to retrenchment within the meaning of clause (oo) of Section 2 of the Act. The respondent.s contention therefore merits rejection and is rejected.

13. The petitioner in his pleadings as also in evidence claimed to have worked for 240 days during the period of 12 calendar months preceding the date of his removal from service. According to him, he having not been served with a notice as envisaged under Section 25-F of the Act, the termination of his service was unlawful. More so, when no notice under the Standing Orders was given to him nor was he paid any retrenchment compensation. This contention, to my mind, does not appear to be holding water. Be it stated that the establishment of Himachal Pradesh State Electricity Board stood exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

15. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing

indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

16. However, the petitioner.s claim of having been in continuous service for not less than one year, or say his claim of having completed 240 days during the period of 12 calendar months preceding the date of his removal from service, does not appear to be having a ring of truth in view of the evidence led by the respondent. The mandays chart Ex. RW1/A, which is adduced in evidence by the respondent and admitted to be correct by the petitioner in his cross-examination as PW1, is demonstrative of the petitioner having not worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. The respondent was therefore not obliged to serve him with a one month.s notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. The petitioner.s contention that in retrenching him, the respondent had violated the provisions of Section 25-F of the Act cannot be therefore accepted.

17. However, the petitioner.s allegation that in retrenching him, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, appears to be tenable. Kesar Singh, then Junior Engineer in the office of Executive Engineer, Himachal Pradesh State Electricity Board (Electrical Division), Mandi, who has been examined by the petitioner as PW2, testified:

"As per the record, Sanjeev Kumar (petitioner) was engaged on 25.1.1998 and he worked upto 31.12.1999. As per the record, Uma Devi was engaged on 2.12.1998 and was still working. Jagdish Chand, S/o Sh. Jeevan Lal was engaged on 15.10.1998 and was still working. As per the record, Kaul Ram, S/o Jyoti Singh was engaged on 18.6.1998 and was still working. Ramesh Chand, S/o Sh. Khem Chand was engaged on 16.5.1998 and was still working. Pawan Kumar, S/o Sh. Hem Raj was engaged on 3.11.1997 and was still working. Shive Ram, S/o Sh. Balku Ram was engaged on 28.10.1997 and was still working. As per the record, Sh. Chander Lal was engaged on 3.9. 1997 and was still working. In the division, more than three hundred workers are working....."

18. The respondent.s aforementioned witness T.K. Sharma categorically admitted in his cross-examination as RW1 that Uma Devi and Jagdish were junior to the petitioner, and that they were still in the employ of the respondent. He also admitted in no ambiguous words that when the petitioner was removed from service Uma Devi and Jagdish were not retrenched. In other words, the latter two were retained at the time the services of the petitioner were terminated. Section 25-G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

19. Since Uma Devi and Jagdish, who were undeniably junior to the petitioner, were retained by the respondent at the time the services of the petitioner were dispensed with, the principle of „Last Come First Go. as envisaged in the abovementioned provisions can safely be held to have been violated by the respondent.

20. Ld. counsel for the respondent contends with vehemence that Uma Devi and Jagdish, who were also retrenched, having been re-engaged in obedience to the orders of the Hon.ble H.P. Administrative Tribunal, they could not be retrenched at the time of termination of services of the petitioner, and the provisions of Section 25-G of the Act cannot therefore be said to have been violated. I am not impressed with this contention. The reason being that re-

engagement of Uma Devi and Jagdish on the basis of the orders of the Hon.ble H.P. Administrative Tribunal can by no stretch of reasoning be interpreted to mean that they have become permanent employees cannot therefore be retrenched even if there arises an occasion for the employer to follow the principle of „Last Come First Go.. I am therefore of the considered view that re-engagement of the said workers on the basis of the orders of the Hon.ble H.P. Administrative Tribunal notwithstanding, the respondent could in law violate the principle of „Last Come First Go. at the time the services of the petitioner were dispensed with. The contention aforementioned has therefore been raised only to be rejected.

21. The upshot therefore is that in retrenching the petitioner, the respondent violated the provisions of section 25-F of the Act, and he (petitioner) is therefore entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is entitled to continuity of service from the date of his engagement (25.1.1998). He is, however, held not entitled to back-wages, because nowhere in his affidavit Ex. PW1/A and cross-examination as PW1 did he maintain that he was not a gainfully employed or that he remained idle after his retrenchment. The issue on hand is held accordingly.

#### *Issue 2:*

22. The materials on record are indicative of the petitioner having approached the respondent from time to time after his retrenchment and requested for his re-engagement but of no avail. Left with no option, he later raised an industrial dispute which came to be referred to this Court for adjudication under Section 10 (1) of the Act, vide Notification No.11-23/84(Lab) I.D./07-Mandi dated October 9, 2007.

23. In Divisional Manager, HPFC & another Vs. Garibu Ram, latest HLJ 2007 (HP) 1160, the delay of more than 10 years was held to have not come in the way of the workman whose services were illegally terminated. Having the surveyed various rulings on the point, the Hon.ble High Court of Himachal Pradesh inter alia observed:

**“.....While taking note of the entire case law with regard to the delay and laches, this Court consistently has held that the provisions of the Limitation Act would not apply but, however, depending upon the facts and circumstances of each case, the principles of delay and laches have to be seen and applied. A delay of even 14 years has been held not to come in the way of the poor man, whose services have been illegally terminated in claiming his relief under the provisions of the Industrial Disputes Act. In Deepa Ram.s case (supra), there was a delay of 12 years. In Ramesh Chand.s case (supra) there was a delay of 9 years. In Mohinder Kumar.s case (supra), there was a delay of 14 years.....”**

24. The petitioner, who is undeniably poverty-stricken, is stated to be illiterate. In view of the facts and circumstances of this case, the principle of delay and laches cannot be held applicable to his case. The issue under discussion is therefore held in his favour and against the respondent.

#### *Issue 3:*

25. The facts and circumstances of this case do not attract the rule of estoppel. The respondent.s counsel has also not been able to show how the rule of estoppel is attracted in this case. The issue on hand is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

26. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. The petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to seniority from the date of his engagement as daily waged beldar (25.1.1998). He is, however, held not entitled to back-wages or compensation in view of the facts and circumstances of the case. The respondent is directed to reinstatement him within a period of 90 days from today failing which the petitioner shall be entitled to 25% back-wages with effect from the date of his unlawful retrenchment (1.1.2000). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 24th day of November, 2008.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref No. : 136/2007

Date of Institution : 1.11.2007

Date of decision : 20.1.2009

Shri Sanjeev Kumar S/o Shri Gurcharan Dass, Village Kandi, P.O. Saithural, Tehsil Thural, District Kangra,  
H.P. ..Petitioner.

*Versus*

The Executive Engineer, I. & P.H. Division, Shahpur, District Kangra, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Sanjeev Kumar S/o Shri Gurcharan Dass workman by the Executive Engineer, I.& P.H. Division, Shahpur, District Kangra, H.P. w.e.f. 07/2001 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar in Irrigation and Public Health Division, Kaza in Kinnaur district in July, 1997, and that he worked as such upto October, 1998. In October/November, 1998, he was transferred to Shahpur Sub Division of Irrigation and Public Health Department where he served upto July, 2001. Thereafter the respondent, according to him, terminated his services orally without serving him with any notice and paying him retrenchment compensation. Claiming to have worked for 240 days in each calendar year as also during the period of 12 calendar months preceding the date of his termination in July, 2001, the petitioner further averred that in dispensing with his services, the respondent had violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short). Besides, the respondent also violated the principle of „last come first go. as envisaged under Section 25-G of the Act, because he at the time of termination of the services of the petitioner retained in service certain workmen namely Pawan Kumar and Mali Ram etc., who were junior to the petitioner. The respondent, it is further alleged, also violated the provisions of Section 25-H of the Act as he after the petitioner.s retrenchment made fresh recruitments without giving the petitioner an opportunity to offer himself for re-employment. The provisions of Section 25-N of the Act, according to the petitioner, were also violated by the respondent. On the basis these averments, the petitioner prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service. He also prayed for regularisation of his service in the regular pay scale w.e.f. January 1, 2007.

3. Disputing the petitioner.s claim of having been engaged in the month of July, 1997, the respondent in his reply averred that he (petitioner) was engaged as daily waged Beldar on November 5, 1998 subject to the availability of work and funds. The petitioner.s claim of having completed 240 days in each calendar year was also disputed by the respondent. Denying having terminated the services of the petitioner, the respondent averred that he (petitioner) had abandoned the job on his own and the provisions of Section 25-F of the Act could not therefore be said to have been violated. The provisions of Section 25-G of the Act, according to the respondent, were also not violated, because no workman junior to the petitioner was retained in service. The petitioner.s allegation of violation of the provisions of Section 25-H of the Act was also repudiated by the respondent. Alleging the respondent to be having no locus standi to file the claim petition, the respondent averred that the petition was barred by time, and that the petitioner was guilty of suppressio veri.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief of service benefits and the amount of compensation he is entitled to?

2. Whether the petitioner is guilty of suppression of facts. ..OPR.
3. Whether the petitioner left the job on his own. ..OPR.
4. Whether the petition is barred by time. ..OPR.
5. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to the relief as mentioned in the operative part of the award.  
 Issue 2 : No  
 Issue 3 : No  
 Issue 4 : No  
 Relief : The petition allowed partly per operative part of the award.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
 DHARAMSHALA, H.P.

Ref No. : 386/2002  
 Date of Institution : 16.12.2002  
 Date of decision : 26.11.2008

Shri Sanju S/o Sh. Gantu Ram, Village- Dalana, P.O. Balhjoli, Tehsil Joginder Nagar, Distt. Mandi, H.P.  
 ..Petitioner.

*Versus*

The Executive Engineer, H.P.S.E.B. Electrical Division, Joginder Nagar, Distt. Mandi, H.P.  
 ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. Vijay Kaundal, Adv. vice  
 For the Respondent : Sh. Gaurav Sharma, Adv. Vice

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of the services of Sh. Sanju S/o Sh. Gantu Ram w.e.f.01-4-2000 by the Executive Engineer, HPSEB Division Joginder Nagar, Distt. Mandi, H.P. without complying the provision of section 25-G and Section 25-H of the Industrial Disputes Act, 1947; where as work and funds are available as alleged by workman, is proper and justified? If not, what relief of service benefits the aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster rolls on March 1, 2000, and that he worked as such upto March 31, 2000. On April 1, 2000, his services were however, terminated by the respondent. Alleging his retrenchment to have been made without any inquiry and payment of compensation, the petitioner averred that in dispensing with his services, the respondent had violated the provisions of Section 25-G of the Industrial Disputes Act, 1947 (the Act, for short), because certain workmen namely Man Singh S/o Kalyan Singh, Prithi Chand S/o Bhoop Singh, Safi Ahmed S/o Hamid Ahmed, Durga Dass S/o Kali Ram and Gian Chand S/o Atma Ram, who were junior to him, were retained at the time of his retrenchment. Besides, the respondent also violated the provisions of Sections 25-H and 25-N of the Act and Clause 14(2) of the HPSEB Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as Beldar on daily wages basis on March 1, 2000, and his having worked as such upto March 31, 2000. The respondent, however, refuted

the petitioner.s allegation that his services were terminated. It is averred that the petitioner had abandoned the job on his own after working for a short period of 28 days. In view of his being a Beldar of casual nature and his having worked only for a short span of time, he, according to the respondent, “was not borne on the list of temporary workman”. Denying having violated any provision of the Act, the respondent further averred:

**“.....It is further submitted that the workman named S/Sh. Man Singh, Prithi Chand, Saffi Muhhamad & Durga Dass alleged to retain in service did not leave their job and as a result they are still on the rolls of replying respondent. As such, the replying respondent has not violated section 25-G and 25-H of Industrial Disputes Act, 1947.....”**

4. As to the allegation of violation of clause 14(2) of the Standing Orders, the respondent.s averments are that in view of the petitioner having abandoned the job on his own, the provisions of the said clause cannot be said to have been violated. The respondent.s other averments relate to estoppel, limitation, mis-joinder of parties and non-joinder of necessary parties.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the termination of services of the petitioner by the respondent w.e.f. 1.4.2000 is violative of the provisions of I.D. Act, 1947 and certified Standing Orders framed by the State Electricity Board? ..OPP.
2. Whether the petition is not maintainable? ..OPR.
3. Whether the petition is not barred by time? ..OPR.
4. Whether the petitioner is estopped from filing the petition due to his act and conduct? ..OPR.

7. Be it stated that holding issues 1 and 3 in the affirmative and issues 2 and 4 in the negative, my Ld. Predecessor-in-office allowed the claim petition, vide award dated September 6, 2005. The relief granted was:

“As a result of my findings on issues above, especially issue No.1, the petitioner is held entitled for his reinstatement in his original service on the same terms and conditions in which he was working prior to his disengagement, with all consequential service benefits including seniority. However, the back-wages are restricted to the extent of 10% only, under the peculiar facts and circumstances of the case. The respondent is directed to re-engage the petitioner within a period of 90 days from the announcement of this award, failing which the petitioner shall be entitled for full back-wages.”

8. Aggrieved, the respondent preferred before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No.1383/2005) on various grounds. One of the grounds was that the Himachal Pradesh State Electricity Board having been exempted from the provisions of the Standing Orders, reliance thereupon by the Tribunal was illegal. Upholding this contention, the Hon.ble High Court disposed of the writ petition along with two other Civil Writ Petitions by a common judgment dated May 18, 2007. It was inter alia observed:

“.....In this view of the matter, the Tribunal wrongly relied upon the provisions of the Standing Orders Act to hold that the disengagement is bad for want of issuance of notice giving 10 clear days to the employees. Admittedly, the employees had not completed 240 days and the Tribunal could not have come to the rescue of the employee.

With regard to the plea of delay and laches, in my view, the Tribunal has rightly come to the conclusion that there is no inordinate delay in the respondents exercising their statutory rights for pursuing their remedies.....

During the course of hearing, it was further argued by the counsel for the respondents that in some of the matters there is admission on record that juniors have been retained in service and also employment has been given to new persons, thus violating Section 25G and 25H of the Act. According to the petitioner, it is disputed question, which cannot be gone into by this Court.....

However, perusal of award shows that there is no finding on this aspect at all. Therefore, on this limited ground as to whether there is violation of provisions of Sections 25-G and 25-H of the Act, all the matters are remanded back for consideration by the Tribunal.....

.....Even though the plea of limitation/delay and laches has been decided against the petitioner, however, while considering the issue of back wages, it would be open for the Tribunal to consider the same and decide accordingly.....”

9. In view of these orders, the question that is required to be determined by this Court is:

**“Whether there is violation of the provisions of Sections 25-G and 25-H of the Act.”**

10. For the reasons to be recorded hereinafter, my answer to this question is: Yes partly, because the respondent is found to have violated the provisions of Section 25-H of the Act.

**REASONS FOR FINDINGS**

11. Recounting the material facts averred in the claim petition, the petitioner in his statement as PW1 maintained that he was engaged as Beldar by the respondent, and that he worked as such from 1.3.2000 to 31.3.2000. His services, according to him, were dispensed with by the respondent w.e.f. 1.4.2000 without any notice, charge-sheet and payment of compensation. Refuting this allegation, the respondent, on the other hand, averred that services of the petitioner were never terminated, but he had abandoned the job on his own. But this claim, to my mind, does not ring true in view of the respondent's failure to lead such documentary evidence as may show that the petitioner had abandoned the job on his own. The petitioner's claim that his services were terminated by the respondent orally on April 1, 2000, therefore, deserves acceptance and is accepted.

12. However, the petitioner's allegation that in terminating his services, the respondent had violated the provisions of Section 25-G of the Act, to my thinking, does not appear to be tenable in view of the materials on record. The petitioner in his statement as PW1 inter alia alleged; “After my services were dispensed with, the respondent has retained a number of junior persons namely Saffi Mohammad, Prithi Chand and Gian Chand etc.” But this allegation does not appear to be having a ring of truth, for the documentary evidence, particularly seniority list Ex. PA relied upon by the petitioner, is not demonstrative of these persons being junior to him. The respondent's witness V.S. Thakur, then Assistant Engineer, HPSEB Sub Division, Joginder Nagar, testified as RW1 that Om Prakash, Raj Kumar, Sajnay Kumar, Prithi Chand, Safi Mohammad and Man Singh, who were also engaged by the department, were all senior to the petitioner. There being nothing to discredit this deposition and the documentary evidence not being indicative of any workman junior to the petitioner having been retained by the respondent at the time the services of the petitioner were dispensed with, the allegation of violation of the provisions of Section 25-G of the Act does not stand and is therefore rejected.

13. However, in view of the materials on record, particularly the aforementioned seniority list issued vide letter Ex. PA, the respondent appears to have violated the provisions of Section 25-H of the Act, which reads:

“25H. Re-employment of retrenched workmen.—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for re-employment, and such retrenched workmen who offer themselves for re-employment shall have preference over other persons.

14. The petitioner's services were undeniably terminated on April 1, 2000. The seniority list issued by the Additional Superintending Engineer, Electrical Division HPSEB, Joginder Nagar, vide his letter dated September 5, 2002 Ex. PA is demonstrative of four persons namely Birbal, Om Prakash, Subhash Chand and Sanjay Kumar having been engaged by the respondent as daily waged Beldar in Electrical Division HPSEB, Joginder Nagar after the termination of services of the petitioner.

15. Ld. counsel for the respondent contends with vehemence that Birbal, Om Prakash, Subhash Chand and Sanjay Kumar, who figure at serial nos. 120B, 121C, 122C and 123L respectively in the seniority list issued vide letter Ex. PA, were also retrenched and later re-engaged in compliance with the orders of Himachal Pradesh Administrative Tribunal, Shimla, and that in view of this position, the provisions of Section 25-H of the Act cannot be said to have been violated. I am not impressed with this contention. The reason being that of the aforesaid four persons, only two namely Om Prakash and Subhash Chand were ordered to be re-engaged along with seven others by the H.P. Administrative Tribunal by its judgment dated January 10, 2001 Ex. RW1/A. There being no materials on record to show that Birbal and Sanjay Kumar were engaged by the respondent on the basis of the orders of the H.P. Administrative Tribunal, the respondent's counsel's contention merits rejection and rejected. There being nothing to suggest that before engagement of these persons the petitioner was given an opportunity to offer himself for re-employment, the provisions of Section 25-H of the Act can safely be held to have been violated by the respondent. The point under discussion is accordingly held in favour of the petitioner and against the respondent.

## RELIEF

16. Judged in the light of findings on the foregoing point, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. In view of the facts and circumstances of the case, he is, however, held not entitled to back-wages and continuity of service. The respondent is directed to re-engage him within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,

S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 649/2008  
Date of Institution : 26.12.2008  
Date of decision : 31.3.2009

Shri Sant Ram S/o Shri Bhalakhu, Village Banuhi, PO Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Sant Ram S/o Shri Bhalakhu, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not



being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

## REASONS FOR FINDINGS

*Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under

Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

(a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

(b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified

authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the

workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1057/2007-9371, dated 25.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref No. : 16/2003

Date of Institution : 3.2.2003

Date of decision : 27.12.2008

Secretary, Bijlee Majdoor Sangh, Shanan Power House Joginder Nagar, Distt. Mandi, H.P.

..Petitioner.

Versus

1. The Chief Engineer, (Hydel), PSEB, (Shakti Bihar) Patiala, Punjab.

2. The Resident Engineer, Shanan Power House, Joginder Nagar, PSEB, Joginder Nagar, Distt. Mandi, H.P.

..Respondents.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR.

For the Respondent : Sh. Sunil Chaudhary, Adv.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

“क्या सचिव, बिजली मजदूर संघ (बी०बी०एम०एस०) शानन पावर हाउस, जोगिन्द्र नगर, जिला मण्डी, हि० प्र० द्वारा मुख्य अभियन्ता, हाईडल-पी०एस०ई०बी० शक्ति विहार पटियाला पंजाब व स्थानिक अभियन्ता हाईडल शानन पावर हाउस, पी०एस०ई०बी०, जोगिन्द्र नगर, जिला मण्डी, हि० प्र० से यह मांग करना कि श्री मिलाप चन्द, वर्कचार्ज फोरमैन को स्पेशल फोरमैन रेगुलर के पद पर पदोन्नत न करके उनसे कनिष्ठ वर्कचार्ज फोरमैन को स्पेशल फोरमैन रेगुलर के पद पर पदोन्नत करने की कार्यवाही उचित है? यदि नहीं तो श्री मिलाप चन्द, कामगार किस तिथि से स्पेशल फोरमैन के पद पर पदोन्नति, पूर्व वेतन, वरिष्ठता, सेवा लाभों व राहत का पात्र है?”

2. On notice, the petitioner (Bijlee Majdoor Sangh) through whom one of its members, Milap Chand, raised the industrial dispute encompassed in the above reference, filed the latter's statement of claim wherein it is averred that he (Milap Chand) was in the employ of Punjab State Electricity Board (the Board, for short) as T. Mate from February 9, 1970. He was promoted as workcharge (W/C, for short) Fitter in the regular pay scale on March 31, 1970. On October 14, 1971, he was promoted as W/C Chargeman, and on October 10, 1975 as W/C Forman. He was further promoted as W/C Special Forman in the regular pay scale on October 1, 1986. On October 29, 1991, he, instead of being promoted as Special Regular Forman in the pay scale of Rs.2000-3500, was promoted only as regular Forman in the pay scale of Rs.1800-3200. For the redressal of his grievance he later approached the Superintending Engineer, Hydel Project, Talwara, Punjab State Electricity Board Circle Mukerian, who told him that the post of Special Regular Forman having already been abolished, he could not be promoted to that post. Alleging Milap Chand to have been discriminated against in the matter of promotion, the petitioner further averred that Paramjit Singh, who was also in the employ of the Board as W/C Forman from April 4, 1984, was junior to Milap Chand. He was made a regular Forman in 1994 and Special Regular Forman on April 30, 1998 in the regular pay scale of Rs.2000-3500, which was revised w.e.f. January 1, 1996. The revised pay scale of a Special Regular Forman, according to the petitioner, was Rs.6750-11050. Milap Chand, who was senior to Paramjit Singh, was entitled to be promoted as Special Regular Forman w.e.f. October 29, 1991, that is, prior to the promotion of Paramjit Singh as Special Regular Forman, but the respondent failed so to do and thus violated the provisions of Article 14 of the Constitution of India. Besides, the respondents, according to the petitioner, also violated the principle of „last come first go.. On the basis of these averments, the petitioner prayed for a direction to the respondents to „designate/upgrade. the workman Milap Chand as Regular Special Foreman from October 29, 1991 in the regular pay scale of Rs.2000-3500 and revised pay scale of Rs.6750-11050 w.e.f. January 1, 1996. He also prayed for a direction to the respondents to fix his seniority in the said grade.

3. The respondents in their joint reply averred that Milap Chand who was promoted as W/C Special Forman vide order No.50 dated May 2, 1988, joined as W/C Special Forman on May 5, 1988. Paramjit Singh having been promoted as W/C Forman on April 4, 1984 was senior to Milap Chand. The latter, according to the respondents, was promoted as Regular Forman on October 29, 1991 in the pay scale of Rs.1800-3200. Claiming non-existence of the post of Special Forman in the regular cadre when some of the W/C employees including Milap Chand were regularised, the respondents averred that on the basis of the policy decision taken by the Board on August 18, 1994, Paramjit Singh

was regularised as Special Forman in the pay scale of Rs.2000-3000. The policy decision, it is further averred "related to the regularization/adjustment of work charged/daily wage/casual employees of those employees who had completed 10 years service in the particular cadre on "as is where is basis." Milap Chand and Paramjit Singh, according to the respondents, thus formed two separate categories, which could not be equated for any purpose whatsoever, and the former's claim is therefore not maintainable. The respondents' other contentions relate to the petitioner's locus standi to maintain the claim petition, cause of action, mis-joinder of parties and non-joinder of necessary parties. It is also averred that as the petitioner's claim relates to "order of 1991. the same is highly belated and time barred.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition. It is inter alia averred that:

".....the services of Sh. Milap Chand has been promoted by the Board as workcharge Foreman on 10.10.1975, and thus the Milap Chand is senior to Mr. Paramjit Singh. It is again submitted that Sh. Paramjit Singh who was working as workcharge Foreman w.e.f. 4.4.1984 has been regularised as Spl. Foreman instead of Foreman after completion of 10 years on the post of workcharged Foreman. It is specifically mentioned here that Sh. Milap Chand was working as regular Foreman w.e.f. 1991 are entitled his next promotion for the post of Spl. Foreman in the regular pay scale Rs.2000-3500 from the date of before Mr. Paramjit Singh has been getting the said pay scale. It is again specifically mentioned here that the services of Sh. Paramjit Singh has been directly promoted from the post workcharge Foreman to Spl. Foreman (Regular) and the same has been against the principles of natural justice. It is further as per rules the workcharge Foreman post be confirmed as Foreman, than promoted as Spl. Foreman regular but in this case he has been directly promoted as Spl. Foreman. Hence the workman Sh. Milap Chand is entitled his promotion as Spl. Foreman before Sh. Paramjit Singh i.e. from 1994, and the Milap Chand Foreman has also entitled his pay fixation w.e.f. 25.10.91 and fixed him Spl. Foreman Seniority before Sh. Paramjit and justice be done."

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the petitioner is entitled to be designated/upgraded as regular workman as special Forman from 29.10.91 with all consequential benefits, as claimed. ..OPP.
2. Whether the petition is not maintainable for want of non-impleading of necessary parties as alleged. ..OPR.
3. Whether the petitioner has not cause of action. ..OPR.
4. Whether the petition is not within time. ..OPR.
5. Relief.

6. Be it stated that holding issues 2 to 4 in the affirmative and issue 1 partly in the affirmative, my Ld. Predecessor-in-office dismissed the claim petition, vide award dated June 6, 2006. Aggrieved, the petitioner laid challenge to the award by preferring before the Hon.ble High Court of Himachal Pradesh a Civil Writ Petition (CWP No.1744/2007). The Hon.ble High Court with the consent of the parties remanded the matter to this Court for decision afresh on merits. It was observed:

".....It is always desirable that the matters are decided on its merit instead of rejecting the same on delay or laches. Consequently, the parties are directed to appear before the learned Industrial Tribunal-cum-Labour Court, Dharamshala on 20.11.2008. The learned Industrial Tribunal-cum-Labour Court, Dharamshala shall decide Reference No.16/2003 on or before 31.12.2008."

7. For the reasons to be recorded hereinafter, my findings on the issues aforementioned are as under:

Issue 1 : Yes partly, because the post of workman Milap Chand is liable to be designated/upgraded as regular Special Forman from December 22, 1997, and not from October 29, 1991. He is entitled to the consequential service benefits that accrue on account of designation/upgradation of his post as Regular Special Forman w.e.f. December 22, 1997.

Issue 2 : No

Issue 3 : No

Issue 4 : No

Relief. : The petition allowed partly per operative part of the award.



## REASONS FOR FINDINGS

*Issue 1:*

8. The petitioner in the statement of claim filed on behalf of Milap Chand, one of its members, claimed him to be in the employ of the Board as W/C T. Mate from February 2, 1970. It is averred that he was promoted as W/C Fitter in the regular pay scale on March 31, 1970. On October 14, 1971, he, according to the petitioner was promoted as W/C Chargeman and on October 10, 1975 as W/C Foreman. On October 1, 1986, he, it is further averred, was promoted as W/C Special Foreman and on October 29, 1991 as regular Foreman in the pay scale of Rs.1800-3200. Claiming Milap Chand to be entitled to be promoted as Regular Special Foreman in the pay scale of Rs.2000-3500 as on October 29, 1991, the petitioner further averred that for the redressal of his grievance he approached the Superintending Engineer, Hydel Project, Talwara, Punjab State Electricity Board Circle Mukerian, who told him that the post of Special Regular Foreman having already been abolished, he could not be promoted to that post. Alleging Milap Chand to have been discriminated against in the matter of promotion, the petitioner further averred that Paramjit Singh who was in the employ of the Board as W/C Foreman from April 4, 1984, was junior to Milap Chand. He was made a Regular Foreman in 1994 and Special Regular Foreman on April 30, 1998, whereas Milap Chand, who was promoted as Regular Foreman on October 29, 1991, was not promoted as Special Regular Foreman but was promoted as Regular Foreman on that date. Disputing the petitioner's claim that Milap Chand was promoted as W/C Special Foreman on October 1, 1986 and that he was senior to Paramjit Singh, the respondents, on the other hand, averred that Milap Chand, who was ordered to be promoted as W/C Special Foreman on May 2, 1988, had joined this post on May 5, 1988, and that Paramjit Singh having been promoted as W/C Foreman on April 4, 1984 was senior to him (Milap Chand).

9. In view of the rival claims of the parties and the facts and circumstances of the case, one of the primal questions that arises for determination is: Whether Milap Chand was senior to Paramjit Singh in the cadre of Regular Foreman. The answer to this, to my thinking, is in the affirmative in view of the materials on record. There is no gainsaying the fact that Milap Chand, who was promoted as W/C Foreman on October 10, 1975, was further promoted as W/C Special Foreman, vide order dated May 2, 1988. Also, there is no denying the fact that thereafter he was promoted as Regular Foreman on October 29, 1991. On the other hand, Paramjit Singh, who was in the employ of the Board as W/C Foreman from April 4, 1984, was promoted as Regular Foreman in the year 1996, and this fact is manifest from the following material admissions made by the respondents. witness Madan Bisht, then Junior Assistant, Shanan Power House, Joginder Nagar, Distt. Mandi, H.P., in his cross-examination as RW1:

"It is correct that the seniority list in respect of the post of Foreman is of State level. It is correct that the next promotion of a Workcharged Foreman is Regular Foreman. It is correct that Paramjit Singh was made Foreman in 1996. It is correct that Milap Chand was made a Regular Foreman in the year 1991....."

10. In view of this deposition and the factum of Milap Chand having been promoted as Regular Foreman on October 29, 1991, he was decidedly senior to Paramjit Singh. More so, in view of the respondents. aforesaid witness Madan Bisht's categorical admission of the petitioner's suggestion put to him in his cross-examination as RW1 that Milap Chand was senior to Paramjit Singh in the regular post (of Foreman).

11. The next question that arises for determination is: Whether Milap Chand, who was promoted as Regular Foreman on October 29, 1991, was entitled to be promoted as Regular Special Foreman on that date. The answer, to my thinking, is in the negative, for there is no material on record to suggest that the date on which Milap Chand was promoted as Regular Foreman, a post of Regular Special Foreman was vacant and he was competent for promotion to that post on that date. However, he was decidedly entitled to be promoted as Regular Special Foreman atleast on the date on which Paramjit Singh, who was junior to him in the cadre of Regular Foreman, was promoted as Regular Special Foreman. Ex. P7 is a copy of the letter dated October 19, 2000 addressed to the Resident Engineer, Shanan Power House, Punjab State Electricity Board, Joginder Nagar, by the Resident Engineer/Const., RSD, PSEB, Shahpurkandi. This document would reveal that Paramjit Singh was promoted as Special Foreman on regular basis on December 22, 1997. However, Milap Chand, who was senior to Paramjit Singh, was not promoted as Regular Special Foreman on or before the said date, accordingly to the petitioner. There being no reason to discredit this allegation of the petitioner, I have no hesitation in holding that Milap Chand, who was senior to Paramjit Singh in the cadre of Regular Foreman, was entitled to be promoted as Regular Special Foreman atleast on December 22, 1997. The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

*Issue 2:*

12. Ld. counsel for the respondents contends with vehemence that Paramjit Singh and Punjab State Electricity Board being necessary parties, the petition is not maintainable. This contention, to my mind, does not appear to be tenable, because Punjab State Electricity Board is duly represented by the respondents and the matters in

controversy can well be adjudicated upon in the absence of Paramjit Singh. The issue on hand is therefore held against the respondents and in favour of the petitioner.

*Issue 3:*

13. In view of what has been held under the above issue 1, the petitioner has decidedly an enforceable cause of action against the respondents. The issue on hand is therefore held against the respondents and in favour of the petitioner.

*Issue 4:*

14. As no time limit is prescribed by law for raising an industrial dispute, the respondent.s claim that the petition is barred by time, is not tenable. The issue on hand is therefore held against the respondent and in favour of the petitioner.

RELIEF

15. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The respondents. action of promoting Paramjit Singh, a Workcharge Foreman, as Regular Special Foreman on December 22, 1997, instead of Milap Chand, who was senior to him (Paramjit Singh) in the cadre of Regular Foreman, was not justified. Milap Chand is entitled to be promoted as Regular Special Foreman w.e.f. December 22, 1997. Besides, he is entitled to all the consequential benefits that would have accrued in his favour on account of his promotion as Regular Special Foreman from the said date. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to the record room.

Announced in the open Court today this 27th day of December, 2008.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 63/2008  
Date of Institution : 22.2.2008  
Date of decision : 26.11.2008

Shri Desh Raj S/o Shri Kanshi Ram, R/o Village Panyala, P.O. Rangus, Tehsil Nadaun, District Hamirpur,  
H.P. *..Petitioner.*

*Versus*

1. Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P.
2. The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. *..Respondents.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the action of the (1) Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. (2) The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. to retain junior workers who are junior to Shri Desh Raj S/o Shri Kanshi Ram workman and to give him break in service as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged beldar by the respondent 1 on January 4, 1999 and posted to Herbal Garden, Neri in Hamirpur district. Claiming to have been working at the said place ever since his engagement as daily waged beldar, the petitioner alleged that the respondents 1 and 2 had been giving fictional breaks in his service so that he could not be able to complete 240 days in any of the calendar years. His co-workmen namely Pawan Kumar, Jasbir Singh, Ravinder Kumar, Madan Lal, Chaman Lal, Vijay Kumar, Ramesh Chand and Milap Chand, who were also working at Herbal Garden, Neri as daily waged beldar, were also given fictional breaks except one Satish Kumar, who was also engaged as daily wagger by the respondent 1 and working in the said garden. In the case of Satish Kumar, no fictional break, according to the petitioner, was ever given and the respondents. act of giving fictional breaks in the petitioner.s service and that of his aforementioned co-workers is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act, for short). Some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who according to the petitioner were also engaged on daily wages basis in another herbal garden of Ayurveda department namely Herbal Garden, Joginder Nagar in Mandi district, were also being given fictional breaks in their service. In their case, the Incharge, Herbal Garden, Joginder Nagar, was, however, forbidden from giving fictional breaks by the Director of Ayurveda, vide his letter dated July 18, 1999. Claiming the fictional breaks in his case to be the intentional act of the respondents, the petitioner further averred that he having never absented from work wilfully was entitled to continuity of service in view of the provisions of Section 25-B of the Act. Besides, he is entitled to wages for the period of fictional breaks. He therefore prays for a direction to the respondents to count the period of fictional breaks towards continuity of his service and pay him wages for the said period along with interest @ 9% per annum. He also prays for a direction to the respondents to regularise his service on the basis of his seniority.

3. The respondents in their joint reply admitted the petitioner.s claim of having been engaged as daily waged beldar at Herbal Garden, Neri on January 4, 1999, but refuted his allegation of fictional breaks. Claiming the work of Herbal Garden, Neri to be a seasonal work, the respondents averred that the petitioner and other workers namely Chaman Lal, Vijay Kumar, Ramesh Chand, Baljit Singh, Pawan Kumar, Jasbir Singh, Desh Raj, Ravinder Kumar, Bahadur Singh, Chander Kant, Ravinder Kumar, Madan Lal and Vijay Singh were engaged on daily wages basis at the said garden subject to availability of work and budget, and no fictional break was ever given in their service. As for Satish Kumar, he was in fact engaged as daily waged worker at Herbal Garden, Joginder Nagar on 1.7.1996 and he being deft in nursery development work was temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the said work and other related works there. About four years later he was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery development work upto the desired level. On the basis of these averments the respondents pray for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondents have been giving fictional breaks in the service of the petitioner. ..OPP.
2. Whether Satish Kumar is junior to the petitioner, as alleged. ..OPP.
3. If the above issues 1 and 2 are proved, what relief of service benefits the petitioner is entitled to? ..OPR.
4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes partly, as the respondents have been giving breaks in the service of the petitioner.  
 Issue 2 : No  
 Issue 3 : The petitioner is entitled to the relief as mentioned in the operative part of the award.  
 Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. The petitioner.s claim of having been engaged as daily waged Beldar at Herbal Garden, Neri on January 4, 1999, is not disputed by the respondents. Also, his claim that he was still working as beldar on daily wages basis at the said garden, is not denied by the respondents. What is denied by the respondents is his allegation of fictional breaks.

But this denial of theirs appears to be far from truth in view of the materials on record. The Mandays Chart of casual labourers working in Herbal Garden, Neri is demonstrative of the petitioner having worked for 228.5 days in 1999, 217.5 days in 2000, 211 days in 2001, 227 days in 2002, 224 days in 2003, 213 days in 2004, 252 days in 2005, 330 days in 2006, 296 days in 2007 and 119 days during the period from January 1, 2008 to April, 2008. That there have been breaks in his service is manifest from this document. In substantiation of his allegation that the breaks in service were notional/fictional, the petitioner swore an affidavit Ex. PW1/A wherein he alleged that the respondents had been giving notional/fictional breaks in his service during the period; January, 1999 to April, 2005. Besides, he relied upon a copy of the letter dated July 18, 1999 addressed to the Incharge, Herbal Garden, Joginder Nagar by the Director of Ayurveda, Himachal Pradesh, Annexure P1. This letter in its material part reads:

**“You are hereby advised not to give any break after 89 days in future to daily paid Labourers who are engaged to work in Herbal Garden as such a notional break has been disapproved by the competent courts also.”**

The petitioner's allegation is that some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were also being given fictional breaks in their service, and that the Incharge of the said Garden was forbidden from so doing by the Director of Ayurveda, vide his aforementioned letter dated July 18, 1999, Annexure P1. As to this allegation, the respondents' averments in paragraph 7 of their joint reply are:

**“That the contents of para-7 are admitted to the extent that these workers Sh. Sohan Singh, Lohli Devi, Ram Singh, Saina Devi, Puni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judhia Devi, Nirmala Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram & Kala Devi were engaged in Herbal Garden, Joginder Nagar and their notional breaks were discontinued by the order of Director Ayurveda, H.P. being senior. The office order issued by the Director Ayurveda to discontinue the breaks is not applicable to the casual labourers working in Herbal Garden Neri because they are being engaged subject to the availability of work & budget, as the work of Herbal Garden Neri is a seasonal work.”**

(emphasis supplied)

8. By these averments, what stands admitted by the respondents is that abovenamed workers, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were being given fictional/notional breaks in their service, which practice was discontinued on receipt of an office order issued by the Director Ayurveda. Why the said Director's office order to discontinue the breaks in service could not be made applicable to the casual labourers working in Herbal Garden, Neri, is averred to be their having been engaged subject to the availability of work and budget, as the work of Herbal Garden, Neri, according to the respondents, is a seasonal work. Going by this claim of the respondents, the petitioner's service, or for that matter the service of the workmen engaged in Herbal Garden, Neri used to be terminated from time to time on account of cessation of work and non-availability of budget. They used to be re-engaged on the availability of work and budget. Although there is no plausible material on record to lend assurance to the respondents' claim that the work of Herbal Garden, Neri is only seasonal, and that the petitioner and his aforementioned co-workers were engaged there as casual workers subject to the availability of work and budget, even if this claim is assumed to be true, the petitioner is entitled to the relief of continuity of service in view of the provisions of Section 25-B of the Act, which in its material part says:

**“25B. Definition of continuous service. For the purposes of this Chapter,—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.....”**

9. It is manifest from these provisions that a workman is deemed to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. If to go by the respondents' stand, the breaks in the petitioner's service were caused on account of cessation of work and non-availability of funds. But the cessation of work and the non-availability of funds not been attributable to any fault on the part of the petitioner, he is to be considered in continuous service ever since his engagement as beldar on daily wages basis (January 4, 1999). The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

*Issue 2:*

10. The petitioner.s claim that Satish Kumar having been engaged by the respondents as daily waged beldar in Herbal Garden, Neri on 12.4.1999 was junior to him, to my thinking, does not appear to be having a ring of truth in view of materials on record. The respondents. averments as also the evidence led by them are indicative of Satish Kumar having been engaged as daily waged beldar in Herbal Garden, Joginder Nagar on July 1, 1996 and his having been temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the nursery development work there. According to the respondents, the reason why Satish Kumar was temporarily shifted to Herbal Garden, Neri, was his being deft in nursery development work and the casual workers engaged in Herbal Garden, Neri not being in the know of that work. About four years later, Satish Kumar was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery work upto the desired level. There being no reason to discredit this claim of the respondents, the petitioner.s claim that Satish Kumar is junior to him cannot to be accepted and is therefore rejected. The issue on hand is accordingly held against the petitioner and in favour of the respondents.

*Issue 3:*

10. In view of the facts and circumstances of the case and my findings on the foregoing issues, the petitioner is entitled to only the relief of continuity of service from the date of his engagement as daily waged beldar (4.1.1999). The issue on hand is held accordingly.

## RELIEF

11. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to continuity of service from the date of his engagement as daily waged beldar (4.1.1999). He is, however, held not entitled to wages for the periods of break in his service. Also, his claim that certain workers junior to him were retained is rejected. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 91/2006  
Date of Institution : 30.8.2006  
Date of decision : 22.12.2008

Smt. Shikha Sahotra/Mehra W/o Shri Ranjeet Singh Mehra, Ganesh Bazar, Baijnath, District Kangra, H.P.  
..Petitioner

*Versus*

1. Managing Director, H.R.T.C. Parivahan Building Shimla, H.P.
  2. Regional Manger H.R.T.C. Baijnath, District Kangra, H.P.
- ..Respondents.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. V.S. Mandeel, Adv.

For the Respondent : Sh. Amit Sood, Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Smt. Shikha Sahotra/Mehra W/o Sh. Ranjeet Singh Mehra workman by the (1) Managing Director Himachal Road Transport Corp. Shimla (2) Regional Manager**

**Himachal Pradesh Transport Corp. Baijnath, District Kangra, H.P. w.e.f. 16.02.01 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondents as Clerk-cum-Typist on daily wages basis in the Jasur office of Himachal Road Transport Corporation (HRTC, for short) on October 15, 1998; that she was later transferred to HRTC, Baijnath, and that her services were suddenly dispensed with on March 9, 2001, vide letter No. HO-9E-253/2001(A). T.Class-II dated 9.3.2001. Alleging the respondents to have given fictional breaks in her service from time to time, the petitioner further averred that the reason for her removal from service was stated to be the expiration of the contractual period of her service. However, Ranjit Sharma, who according to her was also working in the same manner as she, has been adjusted against a regular post. Claiming to have worked for more than 240 days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner averred that she having not been served with any notice, the termination of her service was violative of the provisions of Section 25-F of the Industrial Dispute Act, 1947 (the Act, for short). She therefore prayed for quashing and setting aside the termination order dated March 9, 2001. She also prayed for a direction to the respondents to re-engage her in the same capacity as in which she was working at the time her services were dispensed with. She also prayed for the grant of full back-wages and other consequential service benefits including seniority etc.

3. The respondents in their joint reply averred that the petitioner was engaged by way of make-shift arrangement for 89 days; that the work assigned to her was of temporary nature, and that the term of her employment had expired on February 16, 2001. Claiming to have never employed the petitioner as against a sanctioned post, the respondents further averred that further sanction for her employment was sought vide letter dated February 14, 2001, but the same was denied by the authorities on March 9, 2001 on account of availability of a regular Steno-Typist in the office. The services of the petitioner having thus come to an end on account of non-extension of the work for which she was initially engaged purely on temporary basis, no provision of the Act can be said to have been violated, according to the respondents. Refuting the petitioner's allegation of fictional breaks in her service, the respondents further averred that she having been engaged by way of make-shift arrangement for 89 days, there was no question of giving fictional breaks in her service, and that she never worked for 240 days in any calendar year. The respondents' other contentions relate to non-maintainability of the petitioner's claim and non-accrual of an enforceable cause of action in her favour.

4. The petitioner in her rejoinder controverted the contentions of the respondent and reiterated her stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from the service of the petitioner by the respondent is proper and justified? ..OPP.
2. If the above issue is proved in the affirmative, what relief of service benefits the petitioner is entitled to from the respondent? ..OPP.
3. Whether the application is maintainable before this Court? ..OPR.
4. Relief.
6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No.  
 Issue 2 : She is entitled to reinstatement and continuity of service as mentioned in this issue.  
 Issue 3 : Yes  
 Issue 4 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. Recounting the material facts averred in the reply to the claim petition, the respondents' witness Beni Prashad, Regional Manager, HRTC, Baijnath, testified as RW1:

"Petitioner Shikha Sahotra was engaged as Steno-Typist in our office by way of make-shift arrangement for 89 days. That post was temporary; the duration of 89 days thereof expired on February 16, 2001. Thereafter we wrote a letter to Head Office Shimla, seeking advice in the matter. In respect thereof, a letter dated March

9, 2001 Ex. RW1/A was received from the Head Office wherein it was written that (the post) was discontinued after 89 days because of the same being contractual, and there was availability of a regular Steno-Typist in the office. No other post of Steno-cum-Typist was vacant..... Post on which the petitioner was working, came to an end on expiration of the period for which the same was sanctioned.....”

8. The respondents to succeed in their claim that the petitioner was engaged by way of make-shift arrangement for a period of 89 days, and that her post was contractual, ought to have brought on record the contract of employment. But they having failed so to do, it is difficult to accept their claim. More so, in view of the evidence led by the petitioner and the mandays chart Ex. RW1/C, which is demonstrative of her having worked for 801 days during the period from 15.10.1998 to 16.2.2001. Had the respondents. claim of having engaged the petitioner on contractual basis or by way of make-shift arrangement for 89 days been true she would have not been allowed to work for 801 days during the said period. It is therefore difficult to accept the respondents. claim that the petitioner.s employment was contractual and for a short duration of 89 days.

9. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

10. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (i) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (iii) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (iii) two hundred and forty days, in any other case....”

11. The mandays chart Ex. RW1/C adduced in evidence by the respondents is indicative of the petitioner having worked for more than 240 days during the period of 12 calendar months preceding the date of her retrenchment (February 16, 2001). Admittedly in the respondents. aforesaid witness Beni Prasad.s cross-examination as RW1, no notice was served upon the petitioner at the time her services were dispensed with. There is nothing to suggest that at the time of termination of the services of the petitioner she was paid wages in lieu of one month.s notice, which was required to be served upon her. Also, there is nothing to indicate that she was paid retrenchment compensation by the respondents. In dispensing with her services, the respondents therefore violated the abovementioned provisions of Section 25-F of the Act. The termination of the services of the petitioner thus not being proper and justified, the issue under discussion is held in her favour and against the respondents.

*Issue 2:*

12. In view of what has been held under the foregoing issue, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (February 16, 2001). She is, however, not entitled to back-wages because nowhere in her pleadings did she aver that she remained idle or was not gainfully employed after her retrenchment. Also, nowhere in her statement as PW1 did she utter a word on these lines. The issue under discussion is held accordingly.

*Issue 3:*

13. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is held accordingly.

## RELIEF

14. Judged in the light of my findings on the issues above, particularly issues 1 and 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which she was working at the time her services were terminated (February 16, 2001). Besides, she is held entitled to continuity of service from the said date. Her claim of being entitled to back-wages is, however, negatived. The respondents are directed to reinstate her within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 22nd day of December, 2008.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S. S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 53/2006  
Date of Institution : 20.3.2006  
Date of decision : 31.12.2008

Shri Shiv Ram S/o Shri Jethu Ram, Village Sheela Khabu, P.O. Thina Galu, Tehsil, Sadar, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Secretary, Nagar Panchayat, Rewalsar, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Miss. Poonam, Adv.  
For the Respondent : Sh. Jitender Thakur, Adv.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Shri Shiv Ram S/o Shri Jethu Ram workman by the Secretary, Nagar Panchayat, Rewalsar, District Mandi, H.P. w.e.f. 01.04.2003 without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged Sweeper by the respondent in Nagar Panchayat, Rewalsar on December 3, 2001, and that he worked as such



upto April 30, 2001. On May 1, 2003, his services were terminated by the respondent, even though his work was satisfactory and there was no complaint against him. Claiming to have worked for atleast 240 days in each calendar year, the petitioner averred that the termination of his service was unlawful. He therefore prayed for a direction to the respondent to reinstate him in the same capacity as in which he was working at the time his services were dispensed with. He also prayed for the grant of the consequential service benefits.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Sweeper in Nagar Panchayat Rewalsar on December 3, 2001, but refuted his allegation that his services were dispensed with on May 1, 2003. According to the respondent, the petitioner was appointed on contract basis for a period of 89 days, and he had worked upto March 31, 2003 when his services were terminated on account of non-availability of funds and work. Disputing the petitioner's claim of having worked for 240 days during the period of 12 calendar months preceding the date of termination of his services, the respondent further averred that his services were dispensed with on March 31, 2003 by applying the principle of „last come first go.. The respondent's other contentions relate to maintainability of the claim petition, misjoinder of the parties and non-joinder of necessary parties.

4. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from service of the claimant by the respondent is proper and justified? ..OPP.
2. Whether the petition is maintainable before this Court? ..OPR.
3. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : No  
 Issue 2 : Yes  
 Issue 3 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

7. The respondent's claim that the petitioner was engaged on contract basis for a period of 89 days, to my thinking, does not appear to be having a ring of truth in view of the materials on record. The mandays chart Ex. PW1/B prepared by the Secretary, Nagar Panchayat, Rewalsar, is indicative of the petitioner having worked for 296 days in 2001, 360 days in 2002 and 90 days in 2003. Had the respondent's claim of having engaged the petitioner on contractual basis for a period of 89 days been true, the latter would have not been allowed to work after expiration of the period of time for which he was allegedly engaged. I am therefore not disposed to accept the respondent's claim.

8. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

10. The mandays chart Ex. PW1/B is demonstrative of the petitioner having worked as daily waged Sweeper in Nagar Panchayat, Rewalsar for more than 240 days during the period of 12 calendar months preceding the date of his removal from service. Admittedly in the cross-examination of the respondent's witness Urwashi Walia (RW1), no notice was given to the petitioner at the time his services were dispensed with. Also, the materials on record is not indicative of the respondent having paid the petitioner retrenchment compensation as envisaged under the abovementioned provisions of Section 25-F of the Act. In dispensing with the services of the petitioner, the respondent therefore violated the said provisions of law. In other words, the termination of services of the petitioner by the respondent was not proper and justified. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

#### ISSUE 2:

11. In view of the industrial dispute raised by the petitioner, who was indubitably a „workman. as defined under Section 2(s) of the Act, the petition is perfectly maintainable before this Court. The issue on hand is therefore held in favour of the petitioner and against the respondent.

#### RELIEF

12. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were unlawfully terminated by the respondent. Besides, he is held entitled to continuity of service from the date of his engagement (December 3, 2001) and 50% back-wages from the date of his unlawful retrenchment (March 31, 2003). The respondent is directed to reinstate him within a period of 90 days from today. The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of December, 2008.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 76/2006

Date of Institution : 16.5.2006

Date of decision : 20.1.2009

Shri Shiv Singh S/o Sh. Devi Singh, C/o Sh. N.L. Kaundal, Legal Advisor, H. Q. Balakrupi, P.O. Jalpehar,  
Tehsil Joginder Nagar, Distt. Mandi. H.P. ..Petitioner.

*Versus*

Additional Superintending Engineer, HPSEB (Electrical Division, Joginder Nagar), District Mandi. H.P.  
..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. J.S. Chauhan, Adv.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Sh. Shiv Singh S/o Sh. Devi Singh workman by the Additional Superintending Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P. w.e.f.25.3.99 without complying the provisions of the Industrial Disputes Act, 1947 and clause 14(2) of the Certified Standing Orders of the board is proper and justified? If not, what relief of service benefits and amount of compensation the above aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in the HPSEB, Sub Division, Padhar on September 30, 1996, and that he worked as such upto November 30, 1996. Thereafter his services were orally dispensed with by the Assistant Engineer concerned without serving him with any notice or charge-sheet and paying him retrenchment compensation. Having given artificial breaks of 394 days in the petitioner's service, the respondent, however, re-engaged him on October 25, 1997. On November 25, 1997, the respondent again dispensed with his services, but re-engaged him on February 2, 1998 after giving fictional breaks of 70 days in his service. On March 25, 1998, the respondent again terminated his services, but re-engaged him on November 23, 1998 after giving artificial breaks of 243 days in his service. The services of the petitioner, who this time worked upto January 24, 1999, were again dispensed with by the respondent. However, on February 4, 1999, the petitioner was re-engaged as daily waged Beldar and he worked as such upto March 24, 1999. On March 25, 1999, the respondent again terminated his services without serving him with a prior notice and paying him retrenchment compensation. Claiming the period of fictional breaks in his service to be liable to be counted towards continuity of service in view of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (the Act, for short), the petitioner averred that in dispensing with his services, the respondent not only violated the provisions of Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred as the „Standing Orders.) framed under the Industrial Employment Act, 1946, but also committed breach of the provisions of Section 25-G of the Act by retaining in service the workmen namely Keshar Ram, Subhash Chand, Gian Chand, Pankaj Raj, Shyam Singh, Om Parkash, Biri Singh, Gulab Singh, Lal Singh, Navel Kishore, Yog Raj, Bittu Ram, Mehar Singh, Ram Lal, Bhavan Kumar, Dharam Singh, Krishan Chand, Yadvinder Kumar and Sushil Kumar, who were junior to him, at the time of termination of his services. Besides, the respondent violated the provisions of Section 25-H of the Act, because he after the petitioner's retrenchment engaged the workmen namely Man Singh, Prithi Chand, Safi Mohammad, Durga Dass, Gian Chand, Raj Kumar, Tara Chand, Chatter Singh, Birbal, Om Prakash, Subhash Chand and Sanjay Kumar without affording the petitioner an opportunity to himself for re-employment. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential service benefits. He also prayed for a direction to the respondent to take into account the periods of break in his service towards continuity of service.

3. Admitting the petitioner to have been engaged as daily waged Beldar on muster roll basis on September 3, 1996, the respondent in his reply averred that he (petitioner) was engaged as against the work started under a specific scheme, and that his services stood automatically terminated on completion of the work. The petitioner, according to the respondent, had worked upto November 30, 1996 with certain interruptions/breaks caused due to his own fault. On October 25, 1997, the petitioner, it is further averred, was again engaged as against a specific work and he worked upto November 25, 1997. On completion of that work his services automatically stood terminated. He was again engaged as

against a specific work on February 2, 1998, and worked upto March 24, 1998 whereafter his services automatically stood terminated on completion of the work. He, according to the respondent, was again engaged in a specific scheme namely "Providing 11KVA, H.T. Line to proposed 25 KVA Sub-station at village Haron" and worked upto March 24, 1999 with certain breaks caused by him on his own. On termination of that scheme, his services automatically stood terminated. Thus no fictional break, according to the respondent, was ever given in the petitioner's service.

4. As to the allegation of violation of the provisions of Clause 14(2) of the Standing Orders, the respondent's contention is that the Establishment of HPSEB having been exempted from these provisions, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992, no breach thereof can be said to have been committed. Refuting the petitioner's allegation of violation of the provisions of Section 25-G of the Act, the respondent averred that of the workmen claimed to be junior to the petitioner and alleged to have been retained in service at the time of termination of his services, some were senior to him and some engaged in compliance with the orders of the H.P. Administrative Tribunal. The provisions of Section 25-H of the Act, according to the respondent, were also not violated, because no workman was engaged after the services of the petitioner were dispensed with, except the ones who were engaged in compliance with the orders of the H.P. Administrative Tribunal. The respondent's other contentions relate to maintainability of the claim petition, estoppel, limitation, mis-joinder of the parties and non-joinder of necessary parties.

5. The petitioner in his rejoinder controverted the contentions of the respondent and reiterated his stand taken in the claim petition.

6. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement of the petitioner from service is proper and justified? ..OPP.
2. Whether the reference is stale and time barred? ..OPR.
3. Relief.

7. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : No  
 Issue 2 : No  
 Issue 3 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

8. There is no gainsaying fact that the petitioner was engaged by the respondent as daily waged Beldar in HPSEB Electrical Division, Padhar on September 30, 1996. Also, there is no denying the fact that his services were ultimately terminated on March 25, 1999. During the period from September 30, 1996 to March 24, 1999, the respondent, according to the petitioner, had given fictional breaks in his service from time to time as detailed in the claim petition. Refuting the allegation of fictional breaks, the respondent, on the other hand, claimed to have engaged the petitioner as daily waged Beldar from time to time as against the works started under a specific scheme during the period; September 30, 1996 to March 24, 1999. The services of the petitioner having automatically come to an end on completion of the specific work, his was not a case of termination of services and no provision of the Act can therefore be said to have been violated, according to the respondent. In *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553, the principal question that arose before the Hon.ble Supreme Court of India was:

"Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end."

9. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

"12. "Retrenchment" in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression "the termination by the employer of the service of a workman for any reason whatsoever" while defining the term "retrenchment", which is suggestive of the legislative intent to assign the term "retrenchment" a meaning

wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of „retrenchment..

13. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-

- (i) that the workman was employed in a project or scheme of temporary duration;
- (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
- (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
- (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore, complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment....”

(emphasis is mine)

10. Although in substantiation of his claim of having engaged the petitioner from time to time in a specific scheme, the respondent did not choose to adduce any documentary evidence, even if the claim is assumed to be true, there is no evidence to show that at the time of engagement of the petitioner as a daily wager he was told that he was employed in a scheme of temporary duration. Also, there is no plausible material on record to suggest that the petitioner.s employment had come to an end simultaneously with the termination of the scheme. There is therefore no escape from the conclusion that the termination of services of the petitioner at various points of time during the period from September 30, 1996 to March 24, 1999, and on March 25, 1999 amounts to retrenchment as defined in clause (oo) of Section 2 of the Act.

11. Section 25-B of the Act in so far as the same bears relevance to this case, may be reproduced with advantage:

25 (B). Definition of continuous service.- For the purposes of this Chapter,-

- (1) a workman shall be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorized leave or an accident or a strike which is not illegal, or a lock-out or a cessation or work which is not due to any fault on the part of the workman.....”

12. During the aforementioned; September 30, 1996 to March 24, 1999, there has undeniably been cessation of work for certain periods of time as mentioned in the respondent.s reply. But the cessation of work not being due to any fault on the part of the petitioner, he is to be considered in continuous service for the aforementioned periods of break in his service in view of the abovementioned provisions of Section 25-B of the Act.

13. However, the petitioner.s allegation that in dispensing with his services, the respondent violated the provisions of Clause 14(2) of the Standing Orders, does not appear to be tenable, because the establishment of HPSEB

stood exempted from the applicability of the Standings Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992.

14. However, in terminating the services of the petitioner, the respondent appears to have violated the provisions of Section 25-G of the Act, which reads:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

15. Admittedly in the cross-examination of the respondent's witness Parvesh Thakur (RW1), then Senior Executive Engineer, Electrical Division, Joginder Nagar, Ex. PW1/A is the provisional seniority list issued from the XEN's office. This document is indicative of the workmen mentioned at serial nos. 55 to 111 being junior to the petitioner. Admittedly in the cross-examination of the respondent's aforesaid witness Parvesh Thakur (RW1), the seniority list aforementioned was prepared in respect of such daily wagers as worked upto September, 2002. In view of this deposition, the workmen figuring at serial nos. 55 to 111 in the seniority list Ex. PW1/A can safely be assumed to have been retained in service at the time the services of the petitioner were dispensed with on March 25, 1999. In terminating the services of the petitioner, the respondent thus violated the abovementioned provisions of Section 25-G of the Act.

16. But the respondent also violated the provisions of Section 25-H of the Act, which provides:

**“25 (H). Re-employment of retrenched workman.**—Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons”.

17. The seniority list Ex. PW1/A is demonstrative of the workmen mentioned at serial nos. 112 to 123 having been engaged by the respondent after the termination of services of the petitioner. There is nothing to suggest that before engaging these workmen, the respondent had given the petitioner an opportunity to offer himself for re-employment. Rather the respondent's witness Parvesh Thakur in his cross-examination as RW1 admitted the petitioner's suggestion that he was not called upon to join his work after March 24, 1999. The respondent can therefore safely be held to have violated the provisions of Section 25-H of the Act as well.

18. The upshot therefore is that in terminating the services of the petitioner, the respondent violated the provisions of Section 25-G of the Act. Besides, in re-engaging the aforementioned workmen after the termination of the services of the petitioner without giving him an opportunity to offer himself for re-employment, the respondent violated the provisions of Section 25-H of the Act. The issue under discussion is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 2:*

19. Aggrieved by his retrenchment, the petitioner, it appears, approached the Labour Inspector, Joginder Nagar for the redressal of his grievance. Upon failure of the conciliation proceedings, which must have taken some time, the Labour Inspector referred the matter to the Labour Commissioner, H.P. vide his report No.105 dated May 26, 2004. The industrial dispute raised by the petitioner later came to be referred to this Court, vide Government of H.P., Labour Department, Notification No.11-1/7(LAB.)I.D./06-Joginder Nagar dated March 16, 2006. In view of these facts and the circumstances of the case, the reference, to my mind, cannot be said to be stale. The issue on hand is therefore held in favour of the petitioner and against the respondent.

#### RELIEF

20. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service from the date of his engagement as daily waged Beldar (September 30, 1996). He is, however, held not entitled to back-wages because of his failure to lead such evidence as may show that he remained idle or was not gainfully employed after his retrenchment. The respondent is directed to reinstate the petitioner within a period of 90 days from today, failing which he shall be entitled to 25% back-wages from the date of his unlawful retrenchment (March 25, 1999). The said 25% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the

Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 20th day of January, 2009.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P. (CAMP AT MANDI)**

Ref No. : 66/2006  
Date of Institution : 20.3.2006  
Date of decision : 27.12.2008

Sh. Shyam Singh S/o Late Sh. Sidhu, Village Koti, P.O. Kharihar-Thara, Tehsil Ladbhrol, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

Superintending Engineer, HPSEB Electrical Division, Joginder Nagar, Distt. Mandi, H.P. ..Respondent.

For the Petitioner : Sh. K.S. Guleria, Adv.

For the Respondent : Sh. J.S. Chauhan, Adv.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

**“Whether the termination of services of Sh. Shyam Singh S/o Late Sh. Sidhu by the Superintending Engineer, HPSEB Electrical Division, Joginder Nagar, District Mandi, H.P. w.e.f. 25.01.1998 as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 and Clause 14(2) of the Certified Standing Orders of the Board is proper and justified? If not, what relief of service benefits and compensation the aggrieved workman is entitled to?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in HPSEB Sub Divisions Makrari in 1982. Later his services, according to him, were orally terminated by the respondent. On September 25, 1996, he was, however, again engaged by the respondent under different schemes and worked till May 25, 1998 when his services were again orally terminated by the respondent without giving him a prior notice. Alleging the respondent to have given artificial breaks in his service, the petitioner averred that in dispensing with his services, the respondent had violated the principle of „last come first go. as envisaged under Section 25-G of the Industrial Disputes Act, 1947 (the Act, for short), for certain workers namely Molak Ram and Om Chand, who were junior to him, were retained in service at the time of termination of his services. The period of breaks in his service, according to the petitioner, is liable to be counted towards the continuity of his service, because cessation of work was not attributable to him. In terminating his services, the respondent, according to the petitioner, had also violated the provisions of Section 25-H of the Act and Clause 14(2) of the Industrial Establishment Standing Orders (hereinafter referred to as the Standing Orders) framed under the Industrial Employment (Standing Orders) Act, 1946. The petitioner therefore prayed for a direction to the respondent to reinstate him with back-wages and continuity of service. He also prayed for a direction to the respondent to take into account the period of interrupted service towards continuity of service.

3. Refuting the petitioner.s allegation of artificial breaks in his service, the respondent in his reply averred that the petitioner was initially engaged as daily waged Beldar as against a specific scheme/work; “extension for improvement of voltage system, village Chulla” on November 25, 1983, and that on completion of the work on November 24, 1984, his services automatically stood terminated. About 12 years later, he was again engaged as daily waged Beldar as against the work started under a specific scheme in Electrical Sub Division, Makrari on October 25, 1996, and that his services automatically stood terminated on completion of the work on January 24, 1998. In view of this position, no provision of the Act, according to the respondent, can be said to have been violated. As for the allegation of violation of the provisions of the Standing Orders, the respondent.s contention is that this allegation is

untenable, for the establishment of HPSEB stands exempted from the applicability of the Standing Orders. As to the petitioner's allegation that the workmen namely Molak Ram and Om Chand, who were junior to him, were retained at the time his services were dispensed with, the respondent's averments are that of these two workers, Om Chand, who was engaged in May, 1993, was senior to the petitioner, and that Molak Ram was engaged on muster roll basis on November 25, 1998, that is, after the disengagement of the petitioner. But the petitioner having never approached the respondent for his re-engagement, the provisions of Section 25-G of the Act cannot be said to have been violated. The respondent's other averments relate to estoppel, limitation and maintainability of the claim petition.

4. The petitioner in his rejoinder admitted the respondent's claim that he (petitioner) was engaged on November 25, 1983. Rest of the respondent's contentions were, however, controverted by him.

5. On the pleadings of the parties, my Ld. Predecessor-in-office framed the following issues for determination:

1. Whether the disengagement from the service of the claimant by the respondent is proper and justified? ..OPP.
2. If the above issue proved in the affirmative, what relief of service benefits the claimant is entitled to? ..OPP.
3. Whether the claimant was engaged against a specific work on which completion the service of the claimant came to an automatic end? If so, its effect? ..OPR.

4. Relief.

6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes  
 Issue 2 : The respondent having been found to have failed to observe the provisions of Section 25-H of the Act, the petitioner is entitled to the relief as mentioned in the operative part of the award.  
 Issue 3 : No  
 Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

*Issues 1 and 3:*

7. These issues being inter-linked are taken up together.

8. Ld. counsel for the respondent contends that on both the dates (November 25, 1983 and October 25, 1996) the petitioner having been engaged as against the work started under a specific scheme, his services automatically stood terminated on completion of the work, once on November 24, 1984 and the second time on January 24, 1998. In view of the petitioner's services having thus been automatically terminated on completion of the work started under a specific scheme, his removal from service, according to the Id. counsel, cannot be termed as "retrenchment" as defined under Section 2 (oo) of the Act, which reads:

"2(oo) the termination by the employer of the service of a workman for any reason whatsoever, otherwise than as a punishment inflicted by way of disciplinary action but does not include-

- (a) voluntary retirement of the workman; or
- (b) retirement of the workman on reaching the age of superannuation if the contract of employment between the employer and the workman concerned contains a stipulation in that behalf; or
- (c) termination of the service of the workman as a result of the non-renewal of the contract of employment between the employer and the workman concerned on its expiry or of such contract being terminated under a stipulation in that behalf contained therein; or
- (d) termination of the service of a workman on the ground of continued ill-health."

The Ld. counsel's contention, to my thinking, does not appear to be tenable in view of what has been held by the Hon.ble Apex Court in *S. Nilajkar and others vs. Telecom District Manager, Karnataka*, AIR 2003 SC 3553. In that case, the principal question that arose before the Hon.ble Supreme Court of India was:



**“Whether the workmen recruited for discharging temporary job under a project can insist on compliance of section 25-F of the Act if their services are dispensed with on the project coming to an end.”**

9. Having examined the scope of Sections 2(oo) and 25-F of the Act, the Hon.ble Apex Court inter alia ruled:

- “1. “Retrenchment” in its ordinary connotation is discharge of labour as surplus though the business or work itself is continued. It is well settled by a catena of decisions that labour laws being beneficial pieces of legislation are to be interpreted in favour of the beneficiaries in case of doubt or where it is possible to take two views of a provision. It is also well settled that the Parliament has employed the expression “the termination by the employer of the service of a workman for any reason whatsoever” while defining the term “retrenchment”, which is suggestive of the legislative intent to assign the term „retrenchment. a meaning wider than what it is understood to have in common parlance. There are four exceptions carved out of the artificially extended meaning of the term „retrenchment., and therefore, termination of service of a workman so long as it is attributable to the act of the employer would fall within the meaning of „retrenchment. dehors the reason for termination. To be excepted from within the meaning of „retrenchment. the termination of service must fall within one of the four excepted categories. A termination of service which does not fall within the categories (a), (b), (bb) and (c) would fall within the meaning of „retrenchment..
2. The termination of service of a workman engaged in a scheme or project may not amount to retrenchment within the meaning of sub-clause (bb) subject to the following conditions being satisfied:-
  - (i) that the workman was employed in a project or scheme of temporary duration;
  - (ii) the employment was on a contract, and not as a daily wager simpliciter, which provided inter alia that the employment shall come to an end on the expiry of the scheme or project; and
  - (iii) the employment came to an end simultaneously with the termination of the scheme or project and consistently with the terms of the contract.
  - (iv) the workman ought to have been apprised or made aware of the abovesaid terms by the employer at the commencement of employment.

14. The engagement of a workman as a daily wager does not by itself amount to putting the workman on notice that he was being engaged in a scheme or project which was to last only for a particular length of time or upto the occurrence of some event, and therefore, the workman ought to know that his employment was short lived. The contract of employment consciously entered into by the workman with the employer would result in a notice to the workman on the date of the commencement of the employment itself that his employment was short lived and as per the terms of the contract the same was liable to termination on the expiry of the contract and the scheme or project coming to an end. The workman may not therefore, complain that by the act of employer his employment was coming to an abrupt termination. To exclude the termination of a scheme or project employee from the definition of retrenchment it is for the employer to prove the abovesaid ingredients so as to attract the applicability of sub clause (bb) abovesaid. In the case at hand, the respondent-employer has failed in alleging and proving the ingredients of sub-clause (bb), as stated hereinabove. All that has been proved is that the appellants were engaged as casual workers or daily wagers in a project. For want of proof attracting applicability of sub-clause (bb), it has to be held that the termination of the services of the appellants amounted to retrenchment....”

(emphasis is mine)

10. Although there is no plausible material on record to lend assurance to the respondent.s claim that the petitioner was engaged in a specific scheme, even if this claim is assumed to be true, there is nothing suggest that at the time of engagement of the petitioner as daily wager he was told that his employment was for a specific work, and that his services would be dispensed with on completion of the work. Also, there is no plausible evidence to show that at the time the services of the petitioner were dispensed with, the work started under the alleged specific scheme stood completed, or say, his employment came to an end simultaneously with the termination of the scheme work. There is therefore no escape from the conclusion that the termination of services of the petitioner amount to retrenchment as defined under Clause (oo) of Section 2 of the Act. The respondent.s counsel.s contention aforementioned has therefore been raised only to be rejected.

11. The petitioner alleged that his services were terminated by the respondent without serving him with a prior notice. This allegation of his is no doubt true, but there being nothing suggestive of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment, the respondent was not obliged to serve with him a one month's notice as envisaged under Section 25-F of the Act. In dispensing with the services of the petitioner without serving with him any notice, the respondent cannot therefore be said to have committed any illegality.

12. As for the petitioner's claim that the respondent had been giving fictional breaks in his services, and that the period of fictional breaks is liable to be counted towards his continuity in service, the same, to my thinking, does not appear to be holding water for want of plausible evidence. This claim of his therefore merits rejection and is rejected.

13. The petitioner's allegation that the workmen namely Molak Ram and Om Chand were junior to him, and that they having been retained in service by the respondent at the time his services were dispensed with, there was violation of the provisions of Section 25-G of the Act, also, to my mind, does not appear to be tenable. The respondent's witness Sangram Singh, then Assistant Engineer, Electrical Division, Joginder Nagar, testified as RW1 that of the two workers namely Molak Ram and Om Chand, the latter was senior to the petitioner. This deposition of the respondent's witness having not been challenged during his cross-examination by the petitioner deserves acceptance and the petitioner's claim that Om Chand was junior to him merits rejection and is rejected. As for Molak Ram, he having undeniably been engaged as daily wager on November 25, 1998 (vide the petitioner's suggestion put to the respondent's aforesaid witness during his cross-examination RW1), that is, after the termination of services of the petitioner, the allegation of violation of the provisions of Section 25-G does not stand to reason. To be explicit, Molak Ram not being in the employ of the respondent at the time the services of the petitioner were dispensed with, the latter's allegation that Molak Ram was retained in service at the time of termination of his services is absolutely unfounded and baseless.

14. The upshot therefore is that in terminating the services of the petitioner, the respondent cannot be said to have violated any provision of the Act. Also, the respondent cannot be said to have committed breach of the Standing Orders, because the establishment of HPSEB stands exempted from the applicability of the Standing Orders, vide Notification No. 12-5/85 Shram published in Hindi in RHP dated August 22, 1992. As a result, while issue 1 is held in the affirmative, issue 3 is held in the negative.

#### *Issue 2:*

15. The respondent's witness Sangram Singh's deposition would reveal that Molak Ram was engaged as daily wager on November 25, 1998, that is, after the termination of services of the petitioner. Section 25-H of the Act provides:

“25-H. Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen who offer themselves for reemployment shall have preference over other persons”.

The respondent's aforesaid witness categorically admitted in his cross-examination RW1 that before Molak Ram was engaged as daily wager, no notice was given to the petitioner. In view of this admission and the materials on record not being suggestive of the respondent having given the petitioner an opportunity to offer himself for re-employment, the provisions of Section 25-H of the Act can safely be held to have been violated by the respondent. The petitioner is therefore entitled to reinstatement and continuity of service w.e.f. the date on which Molak Ram was engaged as daily waged Beldar (25.11.1998). The issue under discussion is held accordingly.

#### RELIEF

16. In view of my findings on the above issue 2, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of his retrenchment. Besides, he is held entitled to continuity of service w.e.f. November 25, 1998, that is, the date on which Molak Ram was engaged by the respondent as daily wager without observing of the provisions of Section 25-H of the Act. In view of the facts and circumstances of the case, the petitioner is, however, held not entitled to back-wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 27th day of December, 2008.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 589/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Smt. Damodari Devi w/o Shri Hukam Chand, R/o Village Kulhana, P.O. Huyun Paihed, Tehsil Sarkaghat,  
Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Damodari Devi W/o Shri Hukam Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from

November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

“25N. Conditions precedent to retrenchment of workmen. (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable

opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and  
(ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B,

according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer



referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9256 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 639/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Dawarki Devi W/o Shri Barfu Ram, R/o Village Barang, P.O. Morala, Tehsil Sarkaghat, Distt. Mandi,  
H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Dawarki Devi W/o Shri Barfu Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without**

**following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

- |   |     |
|---|-----|
| 1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. Whether the petition is not maintainable, as alleged.  | OPR |
| 3. Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. Whether the petitioner is guilty of suppressio veri.   | OPR |
| 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct.  | OPR |
| 6. Relief.  |     |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore

difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government’s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner’s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner’s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent’s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner’s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner’s claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner’s services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner’s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner’s pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her

retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### ISSUE 2:

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### Issue 3:

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9254 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### Issue 4:

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### Issue 5:

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a

period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 596/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Junga Devi W/o Shri Ludar Singh, R/o Village Chowk, P.O. Deo Bradla Chowk, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Junga Devi W/o Shri Ludar Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked assuch in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and



unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which

relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (iii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-**

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can

be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9265 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 613/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Kamla Devi w/o Shri Brij Raj, Village Banehardi, PO-Hiyun Pahed, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Kamla Devi W/o Shri Brij Lal, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
  2. Whether the petition is not maintainable, as alleged. ..OPR.
  3. Whether the petition suffers from the vice of delay and laches. ..OPR.
  4. Whether the petitioner is guilty of suppressio veri. ..OPR.
  5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
  6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or



- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the

specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner.s claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner.s services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1030/2007-9248, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 588/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Lajja Devi W/o Shri Prem Singh, Village Morala, PO-Brang(Beari), Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P., ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Lajja Devi W/o Shri Prem Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by

way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. .. OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this

denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:



**“25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,**—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other

Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner.s pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1033/2007-9263, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 24, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 599/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Lakshmi Devi W/o Shri Hari Singh, R/o Village Baneharadi, P.O. Hayun Paihed, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Lakshmi Devi W/o Shri Hari Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also

averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

- |   |     |
|---|-----|
| 1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. Whether the petition is not maintainable, as alleged.  | OPR |
| 3. Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. Whether the petitioner is guilty of suppressio veri.   | OPR |
| 5. Whether the petitioner is estopped from filing the claim petition by her act and conduct.  | OPR |
| 6. Relief.  |     |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or

- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the

specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In



view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9259 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

## REASONS FOR FINDINGS

*Issues 1 and 3:*

7. These issues being inter-linked are taken up together.

8. The petitioner's claim of having been engaged by the respondent as daily waged Beldar in July, 1997 does not appear to be having a ring of truth in view of his admission of the respondent's suggestion put to him in his cross-examination as PW1 that he was engaged in 1998. The mandays chart Ex. RW1/A the correctness of which is not disputed by the petitioner, is also indicative of his having been engaged as Beldar in Irrigation & Public Health Sub Division, Shahpur on November 5, 1998. The respondent's claim that the petitioner was engaged on November 5, 1998, therefore, deserves acceptance and is accepted.

9. However, the respondent's claim that the petitioner had abandoned the job on his own, to my thinking, does not appear to be tenable for want of plausible evidence. In substantiation of his claim, the respondent could well adduce in evidence such muster roll or any other document as may show that the petitioner had absented from work on his own. But the respondent having failed so to do, it is difficult to accept his claim. More so, when the petitioner in his cross-examination as PW1 denied the respondent's suggestion that he (petitioner) had abandoned the job on his own in 2001. The evidence led by the petitioner, on the other hand, lends assurance to his allegation that his services were terminated by the respondent in 2001. The issue 3 is therefore held in his favour and against the respondent.

10. Section 25-F of the Act, which is alleged to have been violated by the respondent, may be reproduced with advantage:

**“25-F. Conditions precedent to retrenchment of workman.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

11. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25-B of the Act, which in its material part reads:

- “25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

12. The petitioner claims to have worked for more than 240 days during the period of 12 calendar months preceding the date of his retrenchment. This claim rings true not only in view of the working days detailed in the mandays chart Ex. RW1/A but also the categorical admission by the respondent.s witness Raghbir Singh of the petitioner.s suggestion put to him during his cross-examination as RW1 that he (petitioner) had worked for more than 243 days during the period of 12 calendar months (preceding the date of his removal from service). There is no gainsaying the fact that at the time the services of the petitioner were dispensed with, he was not served by the respondent with one month.s notice nor was he paid retrenchment compensation as envisaged under Section 25-F of the Act. In terminating the services of the petitioner, the respondent can therefore safely be held to have violated the said provisions.

13. However, the petitioner.s allegation of violation of the provisions of Section 25-G of the Act, to my mind, merits rejection, because in substantiation thereof, he did not choose to lead such documentary evidence as may show that Pawan Kumar and Mali Ram were junior to him, and that they were retained in service at the time his services were dispensed with. The respondent is therefore not proved to have violated the said provisions. Also, the allegation of violation of the provisions of Section 25-N of the act cannot be said to have been established for want of plausible evidence.

14. The upshot is that in terminating the services of the petitioner in 2001 the respondent violated the provisions of Section 25-F of the Act. In other words, the termination of services of the petitioner by the respondent was unlawful. As a result, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is entitled to continuity of service from the date of his retrenchment in 2001. In view of the facts and circumstances of the case, he, to my mind, is entitled to 50% back-wages from the date of his retrenchment. The issue 1 is held accordingly.

#### *Issue 2:*

15. The materials on record not being suggestive of the petitioner having suppressed the material facts from this Court, he cannot be held guilty of suppressio veri. The issue on hand is therefore held in his favour and against the respondent.

#### *Issue 4:*

16. The materials on record would reveal that aggrieved by his retrenchment, the petitioner filed before the H.P. Administrative Tribunal an application (OA (D) 289/2001) in 2001. However, that application was dismissed by the said Tribunal, vide order dated August 25, 2004, Ex. RW1/B. Thereafter the petitioner approached the Conciliation Officer-cum-Labour Officer, Dharamshala for the redressal of his grievance. Upon failure of the conciliation proceedings, the said Officer referred the matter to the Labour Commissioner, H.P. The industrial dispute raised by the petitioner later came to be referred to this Court, vide Government of Himachal Pradesh (Labour Department) Notification No.11-1/85(Lab)ID/07-Kangra dated September 25, 2007. In view of these facts and the circumstances of the case the respondent.s allegation that the petition is barred by time merits rejection and is rejected. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

17. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is held entitled to continuity of service and 50% back-wages from the date of his retrenchment in 2001. The said 50% back-wages shall be computed on the basis of the

last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to reinstate the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 20th day of January, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 600/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Maraju Devi W/o Shri Shali Ram, Village Jhajar Kakail (Jhajhar Kunain) PO –Deo Bradalai, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Maraju Devi W/o Shri Shali Ram, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as

envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority, the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. .. OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of

this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**“25L (a) “industrial establishment” means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-**

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

- “25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.**

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**



18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the

Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC)."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1091/2007-9233, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 606/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Nirmala Devi W/o Shri Sunder Singh, Village Neda (Lavanpur), PO- Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Nirmala Devi W/o Shri Sunder Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.

- |    |   |        |
|----|---|--------|
| 2. | Whether the petition is not maintainable, as alleged.                                     | ..OPR. |
| 3. | Whether the petition suffers from the vice of delay and laches.                           | ..OPR. |
| 4. | Whether the petitioner is guilty of suppressio veri.                                      | ..OPR. |
| 5. | Whether the petitioner is estopped from filing the claim petition by her act and conduct. | ..OPR. |
| 6. | Relief.   |        |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### Issue 1:

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

#### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

#### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,**—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore

obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 1047/2007-9253, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on



the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 650/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Promila Devi W/o Shri Raj Mal, R/o Village & P.O. Saklana, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Promila Devi W/o Shri Raj Mal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the

petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### Issue 1:

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act.

What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the

respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she

prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9261 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 597/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Rampa Devi W/o Shri Ram Chand, R/o Village & P.O. Kalana, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

#### AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Rampa Devi W/o Shri Ram Chand by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further



averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service

which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”**

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner.s pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9258 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppression of truth, does not appear to be having a bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 577/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Sakuntala Devi w/o Shri Kashmir Singh, R/o Village Harnal, P.O. Panehed, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Sakuntala Devi W/o Shri Kashmir Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a

retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .. OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. .. OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.  
 Issue 2 : No.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore



difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,**—(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9240 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 16, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 585/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Smt. Sakuntla Devi W/o Shri Jai Singh, R/o Village Jangail, P.O. Kot, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Sakuntla Devi W/o Shri Jai Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of

Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.
- Issue 2 : No.
- Issue 3 : No
- Issue 4 : No
- Issue 5 : No
- Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

#### **“25L (a) “industrial establishment” means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner’s retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month’s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of



such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

- "25B. Definition of continuous service. For the purposes of this Chapter,-**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month.s notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

- "25-G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17 he petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to

have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See *Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd.* 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9237 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 17, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not

suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 575/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Sheetla Devi W/o Shri Hem Raj, R/o Village Hawani, P.O. Rupadi, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Sheetla Devi W/o Shri Hem Raj by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment"

within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.-** (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**"25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.



23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9235 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 15, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S. S. SEN,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 576/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Smt. Shiv Devi W/o Shri Nand Lal R/o Village Banwar, P.O. Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Shiv Devi W/o Shri Nand Lal by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from

November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (i) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such

retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

- "25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;
- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

- "25-G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the

month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9239 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 15, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8,

2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 609/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Smt. Sarita Devi W/o Shri Dhani Ram, R/o Village & P.O. Bradta, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner.

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent.

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Smt. Sarita Devi W/o Shri Dhani Ram by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**



2. On notice, the petitioner filed her statement of claim wherein she averred that she was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that she worked assuch in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, her services were terminated by the respondent by giving her a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, the petitioner further averred that retrenchment compensation having been paid to her before the date of her retrenchment and not at the time her services were dispensed with, the termination of her services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to her, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of her services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid her retrenchment compensation as envisaged under Section 25F of the Act, her retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to her and unlawfully retained in service at the time her services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. She also prayed for a direction to the respondent to reinstate her with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating her services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of her services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by her. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by her act and conduct, and that she is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by her act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. She is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of her services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of her having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore

difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July

2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of her being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.—**No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless she has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

- (2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-
  - (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
    - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
    - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of her retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve her with one month's notice and pay her retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories

Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of her statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to her, were unlawfully retained in service by the respondent at the time her services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to her, were retained in service at the time her services were dispensed with by the respondent.

19. Further, the petitioner in her affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to her and retained in service at the time her (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to her (petitioner) were retained in service at the time of termination of her services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner.s allegation that the workman Shashi Kant (Shashi Lal) who was junior to her, was retained in service at the time her services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner.s Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer herself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner.s pleadings being non-existent in her allegation of Mamta Devi having been re-engaged after her retrenchment and this allegation of her not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which she was working at the time her services were dispensed with. Besides, she is entitled to continuity of service from the date of her retrenchment (July 8, 2005). Her claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of her statement of claim averred that she was not gainfully employed anywhere after the termination of her services, and that she was still unemployed. In substantiation of this claim she in her affidavit inter alia deposed that after her illegal retrenchment she was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of her, her claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of her unlawful retrenchment. The issue under discussion is accordingly held in her favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of her grievance, her claim suffers from the vice of delay and laches, which disentitles her to the reliefs she prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9264 dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by her unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of her grievance. Her claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of her having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

**RELIEF**

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of her unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 583/2008

Date of Institution : 29.10.2008

Date of decision : 31.3.2009

Shri Sukh Ram S/o Shri Narang, Village Darku, PO Longani, Tehsil Sarkaghat, Distt. Mandi, H.P.

..Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Respondent..

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

**AWARD**

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Sukh Ram S/o Shri Narang, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from

November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? ..OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"



7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression “factory” occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-

but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable

opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: "25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is

demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 926/2007-9274, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 17, 2008. In

view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

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IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.

Ref No. : 595/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Suresh Kumar S/o Shri Gian Chand, Village Siyathi, P.O. Sajao Piplu, Tehsil Sarkaghat, Distt. Mandi,  
H.P. *..Petitioner.*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. *..Respondent.*

*Reference under section 10 (1) of the Industrial Disputes Act, 1947.*

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

(1) The following reference was received for adjudication from the appropriate Government:

**“Whether retrenchment of services of Shri Suresh Kumar S/o Shri Gian Chand, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of**

**back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?"**

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? .. OPP.
2. Whether the petition is not maintainable, as alleged. ..OPR.
3. Whether the petition suffers from the vice of delay and laches. ..OPR.
4. Whether the petitioner is guilty of suppressio veri. ..OPR

5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. ..OPR.

6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1:*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,-  
but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of

HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months' notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf"
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
  - (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
  - (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him."

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression "employer" occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**"(g) "employer" means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;"



12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the "employer" in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

"25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,—**(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government’s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner’s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner’s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent’s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner’s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner’s claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner’s services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner’s Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner’s pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his

retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

*Issue 2:*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 3:*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC))."

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 907/2007-9246, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

*Issue 4:*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5:*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a

period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.\

Ref No. : 629/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Suresh Kumar S/o Shri Sohan Singh R/o Village & P.O. Kamlah, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Suresh Kumar S/o Shri Sohan Singh, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand,

Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months' notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

- |   |     |
|---|-----|
| 1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. Whether the petition is not maintainable, as alleged.  | OPR |
| 3. Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. Whether the petitioner is guilty of suppressio veri.   | OPR |
| 5. Whether the petitioner is estopped from filing the claim petition by his act and conduct.  | OPR |
| 6. Relief.  | OPR |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

- |           |  |
|-----------|--|
| Issue 1 : | Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services. |
| Issue 2 : | No.  |
| Issue 3 : | No   |
| Issue 4 : | No   |
| Issue 5 : | No   |
| Relief. : | The petition allowed partly per operative part of the award.   |

#### REASONS FOR FINDINGS

##### *Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the

case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner.s retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.-**

- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-
- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and

- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

(i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;

(ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette."

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.**—Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.



19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the**

**Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9899 dated 30.11.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated October 3, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### *Issue 4*

27. The respondent.s allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### *Issue 5*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 646/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Thakur Singh S/o Shri Jhahru, R/o Vill. Sarskan, P.O. Baroti, Tehsil Sarkaghat, Distt. Mandi, H.P.

....*Petitioner*

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....*Respondent*

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Thakur Singh S/o Shri Jhahru by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above Employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to?

OPP

2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

### REASONS FOR FINDINGS

#### *Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads: "25L (a) "industrial establishment" means-

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power,

or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**

(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says: “25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a "factory" within the meaning of Section 2(m) of the Factories Act, 1948, or say, an "industrial establishment" as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

**"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."**

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3*

25. The Ld. Dy. D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

**“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC).**

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9280 dated 13.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### *Issue 4*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### *Issue 5*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on



the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 62/2008  
Date of Institution : 22.2.2008  
Date of decision : 26.11.2008

Shri Vijay Singh S/o Shri Khaimdi Ram, R/o Village Dhunter, P.O. Kuthera, Tehsil & District Hamirpur, H.P.

.....Petitioner

*Versus*

1. Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P.
2. The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P.

.....Respondents

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Dy.D.A.

#### AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the action of the (1) Project Officer, Herbal Garden, Joginder Nagar, District Mandi, H.P. (2) The Incharge, Herbal Garden, Neri, P.O. Khagal, Tehsil & District Hamirpur, H.P. to retain junior workers who are junior to Shri Vijya Singh S/o Khaimdi Ram workman and to give him break in service as alleged by the workman without complying the provisions of the Industrial Disputes Act, 1947 is proper and justified? If not, what relief of back wages, seniority and service benefits the above aggrieved workman is entitled from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged as daily waged beldar by the respondent 1 on February, 1999 and posted to Herbal Garden, Neri in Hamirpur district. Claiming to have been working at the said place ever since his engagement as daily waged beldar, the petitioner alleged that the respondents 1 and 2 had been giving fictional breaks in his service so that he could not be able to complete 240 days in any of the calendar years. His co-workmen namely Pawan Kumar, Jasbir Singh, Ravinder Kumar, Desh Raj, Chaman Lal, Vijay Kumar, Ramesh Chand and Milap Chand, who were also working at Herbal Garden, Neri as daily waged beldar, were also given fictional breaks except one Satish Kumar, who was also engaged as daily wagger by the respondent 1 and working in the said garden. In the case of Satish Kumar, no fictional break, according to the petitioner, was ever given and the respondents. act of giving fictional breaks in the petitioner.s service and that of his aforementioned co-workers is violative of the provisions of Sections 25-G and 25-H of the Industrial Disputes Act, 1947 (the Act, for short). Some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who according to the petitioner were also engaged on daily wages basis in another herbal garden of Ayurveda department namely Herbal Garden, Joginder Nagar in Mandi district, were also being given fictional breaks in their service. In their case, the Incharge, Herbal Garden, Joginder Nagar, was, however, forbidden from giving fictional breaks by the Director of Ayurveda, vide his letter dated July 18, 1999. Claiming the fictional breaks in his case to be the intentional act of the respondents, the petitioner further averred that he having never absented from work wilfully

was entitled to continuity of service in view of the provisions of Section 25-B of the Act. Besides, he is entitled to wages for the period of fictional breaks. He therefore prays for a direction to the respondents to count the period of fictional breaks towards continuity of his service and pay him wages for the said period along with interest @ 9% per annum. He also prays for a direction to the respondents to regularise his service on the basis of his seniority.

3. The respondents in their joint reply admitted the petitioner's claim of having been engaged as daily waged beldar at Herbal Garden, Neri on February 10, 1999, but refuted his allegation of fictional breaks. Claiming the work of Herbal Garden, Neri to be a seasonal work, the respondents averred that the petitioner and other workers namely Chaman Lal, Vijay Kumar, Ramesh Chand, Baljit Singh, Pawan Kumar, Jasbir Singh, Desh Raj, Ravinder Kumar, Bahadur Singh, Chander Kant, Ravinder Kumar and Madan Lal were engaged on daily wages basis at the said garden subject to availability of work and budget, and no fictional break was ever given in their service. As for Satish Kumar, he was in fact engaged as daily waged worker at Herbal Garden, Joginder Nagar on 1.7.1996 and he being deft in nursery development work was temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the said work and other related works there. About four years later he was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery development work upto the desired level. On the basis of these averments the respondents pray for dismissal of the claim petition.

4. The petitioner in his rejoinder controverted the contentions of the respondents and reiterated his stand taken in the claim petition.

5. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the respondents have been giving fictional breaks in the service of the petitioner. OPP
2. Whether Satish Kumar junior to the petitioner, as alleged. OPP
3. If the above issues 1 and 2 are proved, what relief of service benefits the petitioner is entitled to? OPR
4. Relief.
6. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes partly, as the respondents have been giving breaks in the service of the petitioner.  
 Issue 2 : No  
 Issue 3 : The petitioner is entitled to the relief as mentioned in the operative part of the award.  
 Relief : The claim petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1*

7. The petitioner's claim of having been engaged as daily waged Beldar at Herbal Garden, Neri on February, 1999, is not disputed by the respondents. Also, his claim that he was still working as beldar on daily wages basis at the said garden, is not denied by the respondents. What is denied by the respondents is his allegation of fictional breaks. But this denial of theirs appears to be far from truth in view of the materials on record. The Mandays Chart of casual labourers working in Herbal Garden, Neri is demonstrative of the petitioner having worked for 189 days in 1999, 196.5 days in 2000, 183 days in 2001, 216.6 days in 2002, 206.5 days in 2003, 176 days in 2004, 249 days in 2005, 330 days in 2006, 296 days in 2007 and 119 days during the period from January 1, 2008 to April, 2008. That there have been breaks in his service is manifest from this document. In substantiation of his allegation that the breaks in service were notional/fictional, the petitioner swore an affidavit Ex. PW1/A wherein he alleged that the respondents had been giving notional/fictional breaks in his service during the period; January, 1999 to April, 2005. Besides, he relied upon a copy of the letter dated July 18, 1999 addressed to the Incharge, Herbal Garden, Joginder Nagar by the Director of Ayurveda, Himachal Pradesh, Annexure P1. This letter in its material part reads:

“You are hereby advised not to give any break after 89 days in future to daily paid Labourers who are engaged to work in Herbal Garden as such a notional break has been disapproved by the competent courts also.”

The petitioner's allegation is that some other workmen namely Sohan Singh, Lohali Devi, Ram Singh, Smt. Saina Devi, Punni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judiya Devi, Nirmla Devi, Kamla Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram and Smt. Kala Devi, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were also being given fictional breaks in their service, and that the Incharge of the said Garden was forbidden from so doing by the

Director of Ayurveda, vide his aforementioned letter dated July 18, 1999, Annexure P1. As to this allegation, the respondents. averments in paragraph 7 of their joint reply are:

“That the contents of para-7 are admitted to the extent that these workers Sh. Sohan Singh, Lohli Devi, Ram Singh, Saina Devi, Puni Devi, Sher Singh, Prem Singh, Kuldeep Chand, Nirmal Kumar, Judhia Devi, Nirmala Devi, Baldev Raj, Munni Devi, Sukh Ram, Raj Mal, Ramesh Kumar, Mahesh Kumar, Hirda Ram, Mattu Ram, Shiv Ram & Kala Devi were engaged in Herbal Garden, Joginder Nagar and their notional breaks were discontinued by the order of Director Ayurveda, H.P. being senior. The office order issued by the Director Ayurveda to discontinue the breaks is not applicable to the casual labourers working in Herbal Garden Neri because they are being engaged subject to the availability of work & budget, as the work of Herbal Garden Neri is a seasonal work.”

(emphasis supplied)

8. By these averments, what stands admitted by the respondents is that abovenamed workers, who were engaged on daily wages basis in Herbal Garden, Joginder Nagar, were being given fictional/notional breaks in their service, which practice was discontinued on receipt of an office order issued by the Director Ayurveda. Why the said Director.s office order to discontinue the breaks in service could not be made applicable to the casual labourers working in Herbal Garden, Neri, is averred to be their having been engaged subject to the availability of work and budget, as the work of Herbal Garden, Neri, according to the respondents, is a seasonal work. Going by this claim of the respondents, the petitioner.s service, or for that matter the service of the workmen engaged in Herbal Garden, Neri used to be terminated from time to time on account of cessation of work and non-availability of budget. They used to be re-engaged on the availability of work and budget. Although there is no plausible material on record to lend assurance to the respondents. claim that the work of Herbal Garden, Neri is only seasonal, and that the petitioner and his aforementioned co-workers were engaged there as casual workers subject to the availability of work and budget, even if this claim is assumed to be true, the petitioner is entitled to the relief of continuity of service in view of the provisions of Section 25-B of the Act, which in its material part says:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

- (1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman.....”

9. It is manifest from these provisions that a workman is deemed to be in continuous service for a period if he is, for that period, in uninterrupted service, including the service, which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman. If to go by the respondents. stand, the breaks in the petitioner.s service were caused on account of cessation of work and non-availability of funds. But the cessation of work and the non-availability of funds not been attributable to any fault on the part of the petitioner, he is to be considered in continuous service ever since his engagement as beldar on daily wages basis (February, 1999). The issue under discussion is accordingly held in favour of the petitioner and against the respondents.

*Issue 2*

9. The petitioner.s claim that Satish Kumar having been engaged by the respondents as daily waged beldar in Herbal Garden, Neri on 12.4.1999 was junior to him, to my thinking, does not appear to be having a ring of truth in view of materials on record. The respondents. averments as also the evidence led by them are indicative of Satish Kumar having been engaged as daily waged beldar in Herbal Garden, Joginder Nagar on July 1, 1996 and his having been temporarily shifted to Herbal Garden, Neri on 12.4.1999 to carry out the nursery development work there. According to the respondents, the reason why Satish Kumar was temporarily shifted to Herbal Garden, Neri, was his being deft in nursery development work and the casual workers engaged in Herbal Garden, Neri not being in the know of that work. About four years later, Satish Kumar was called back to Herbal Garden, Joginder Nagar after the other workers of Herbal Garden, Neri gained knowledge of nursery work upto the desired level. There being no reason to discredit this claim of the respondents, the petitioner.s claim that Satish Kumar is junior to him cannot to be accepted and is therefore rejected. The issue on hand is accordingly held against the petitioner and in favour of the respondents.

*Issue 3*

10. In view of the facts and circumstances of the case and my findings on the foregoing issues, the petitioner is entitled to only the relief of continuity of service from the date of his engagement as daily waged beldar (10.2.1999). The issue on hand is held accordingly.

## RELIEF

11. Judged in the light of my findings on the issues above, the petition succeeds partly and is allowed in part. The petitioner is held entitled to continuity of service from the date of his engagement as daily waged beldar (10.2.1999). He is, however, held not entitled to wages for the periods of break in his service. Also, his claim that certain workers junior to him were retained is rejected. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 26th day of November, 2008.

By order,  
S.S.SEN  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 608/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Vinod Kumar S/o Shri Kanhiya Lal, Village Parail, PO Samod, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Vinod Kumar S/o Shri Kanhiya Lal, by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act.

But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner's retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner's claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner's allegation of violation of the provisions of Section 25G of the Act, the respondent's contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner's retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief. : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no

denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

**"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an "industrial establishment" within the meaning of Section 25L(a) of the Act, the petitioner's Authorised Representative's aforementioned contention deserves acceptance and is accepted.

10. The petitioner's Authorised Representative further contends that another count on which his client's retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**"25N. Conditions precedent to retrenchment of workmen.—**

- (1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
  - (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”
- (2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.
- (3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.
- (4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(3) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.—**Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:



“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

## Issue 2

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

## Issue 3

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest

Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.LO/MZ/IV/ID/154/06 & 938/2007-9271, dated 12.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/2008-Mandi dated July 27, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### *Issue 4*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### *Issue 5*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 645/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Vinod Kumar S/o Shri Hari Singh, R/o Village Bhadrana, P.O. Saklana, Tehsil Sarkaghat, Distt. Mandi,  
H.P.

....Petitioner

Versus

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Vinod Kumar S/o Shri Hari Singh by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1998, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1998 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to

that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

1. Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? OPP
2. Whether the petition is not maintainable, as alleged. OPR
3. Whether the petition suffers from the vice of delay and laches. OPR
4. Whether the petitioner is guilty of suppressio veri. OPR
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct. OPR
6. Relief.

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.

Issue 2 : No.

Issue 3 : No

Issue 4 : No

Issue 5 : No

Relief : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1998 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner.s allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression “industrial establishment” is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **“25L (a) “industrial establishment” means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);”

7. The petitioner.s Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an “industrial establishment” within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months. notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of “industrial establishment” and the petitioner.s retrenchment

made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

**“(m) “factory” means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on,- but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place.”

9. The respondent.s pleadings are non-existent in such averments as may show the Public Works Department to be a “factory” as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.s contention that Dharampur Division of HPPWD is an “industrial establishment” within the meaning of Section 25L (a) of the Act and the petitioner.s retrenchment under Section 25N of the Act does not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (a) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (b) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case....”

15. The petitioner.s claim of having worked for more than 240 days in each calendar year from 1998 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month.s notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government.s action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner.s retrenchment is still unlawful on account of the violation by the respondent of the principle of “Last Come First Go” as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**“25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of “Last Come First Go” as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

“That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement.”

18. This reply of the respondent lends assurance only to the petitioner.s allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent.s witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner.s suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. So he is indubitably junior to the petitioner. The said seniority list is also indicative of the said workman having been retained in service at the time the petitioner was retrenched. The respondent thus on his

own showing lent credence to the petitioner's allegation that the workman Shashi Kant (Shashi Lal) who was junior to him, was retained in service at the time his services were dispensed with. In retrenching the petitioner, the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provisions of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

"It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9278 dated 13.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.



*Issue 4*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

*Issue 5*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

## RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

**IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL  
TRIBUNAL DHARAMSHALA, H.P.**

Ref No. : 656/2008  
Date of Institution : 29.10.2008  
Date of decision : 31.3.2009

Shri Vipin Kumar S/o Shri Hem Raj, R/O Village Maluya, P.O. Sidhpur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Petitioner

*Versus*

The Executive Engineer, HPPWD, Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P.

....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR  
For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

## AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether retrenchment of services of Shri Vipin Kumar S/o Shri Hem Raj by the Executive Engineer, HPPWD Division Dharampur, Tehsil Sarkaghat, Distt. Mandi, w.e.f. 08.7.2005 without following the provisions of Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above Ex-Worker is entitled to from the above employer?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on muster roll basis in 1999, and that he worked as such in Dharampur Division of HPPWD upto July 8, 2005. On July 8, 2005, his services were terminated by the respondent by giving him a

retrenchment notice under Section 25N of the Industrial Disputes Act, 1947 (the Act, for short). Claiming to have worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, the petitioner further averred that retrenchment compensation having been paid to him before the date of his retrenchment and not at the time his services were dispensed with, the termination of his services was not lawful. More so, when the authority specified by the Government (Chief Engineer, HPPWD (B&R) Central Zone, Mandi) from whom prior permission for retrenchment of the petitioner is stated to have been obtained under Section 25N (1) (b) of the Act, could not in law be notified as specified authority. Another count on which the termination of services of the petitioner, according to him, is unlawful relates to the notice of retrenchment being bad in the eye of law. It is averred that the provisions of Section 25N of the Act under which the notice of retrenchment was issued, apply to a workman employed in an „industrial establishment. as defined under Section 25L of the Act. The Public Works Department in which was employed the petitioner, not being an „industrial establishment. within the meaning of Section 25L of the Act, the termination of his services by way of three months. notice under Section 25N of the Act is unlawful. In the case of Public Works Department, the notice of termination of services of a workman, according to the petitioner, is envisaged under Section 25F of the Act. But the respondent having not given the petitioner such a notice and paid him retrenchment compensation as envisaged under Section 25F of the Act, his retrenchment is unlawful on this count as well. Yet another count on which the petitioner.s retrenchment is unlawful, is stated to be the violation by the respondent of the principle of „Last Come First Go. as envisaged under Section 25G of the Act. The workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, according to the petitioner, were junior to him and unlawfully retained in service at the time his services were dispensed with. In terminating the services of the petitioner, the respondent thus violated the provisions of Section 25G of the Act as well. The petitioner therefore prayed for setting aside the retrenchment orders dated July 8, 2005. He also prayed for a direction to the respondent to reinstate him with full back-wages, continuity of service and other consequential benefits. Another direction sought to be issued to the respondent is for regularization of the services of the petitioner in accordance with the policy of the State Government in this behalf.

3. The respondent in his reply admitted the petitioner.s claim of having been engaged as daily waged Beldar on muster roll basis in 1999 and retrenched on July 8, 2005, but denied having violated the provisions of the Act in terminating his services by a notice under Section 25N of the Act. Explaining the reason why the petitioner was retrenched, the respondent averred that on creation of Dharampur Division out of Sarkaghat Division of HPPWD with effect from September 7, 1998, a large number of labourers was indiscriminately engaged during the period from November, 1998 to June, 1999. The total strength of labour swelled upto 4045, which was being maintained out of Non-Plan funds. The funds utilized for defrayment of labour wages caused financial hardship, which adversely affected the maintenance of roads in Mandi district. So, it was under these circumstances that the respondent retrenched the services of the petitioner and other surplus workers after obtaining permission of the Chief Engineer, HPPWD (B&R) Central Zone, Mandi, who was notified as the specified authority by the State Government under Section 25N of the Act. It is averred that the petitioner having been given a three months. notice and paid retrenchment compensation as envisaged under Section 25N of the Act, the termination of his services is not violative of any provision of the Act. As to the petitioner.s allegation of violation of the provisions of Section 25G of the Act, the respondent.s contention is that due to non-availability of senior workers in the newly created Dharampur Division some workers were transferred to that Division from other Divisions/Sub Divisions. However, when on scrutiny of the „case/seniority. the true position came to notice, retrenchment notices were issued to the „above juniors., who were also „surplus to the requirement.. Claiming the petitioner.s retrenchment to be in accordance with the provisions of the Act, the respondent further averred that the reference was not maintainable and the petitioner not entitled to the relief prayed for by him. It is also averred that the petition suffers from the vice of delay and laches; that the petitioner is estopped from filing the claim petition by his act and conduct, and that he is guilty of suppressio veri.

4. On the pleadings of the parties, the following issues were framed for determination:

- |    |  |     |
|----|--|-----|
| 1. | Whether the termination of services of the petitioner by the respondent is unlawful. If so, what relief the petitioner is entitled to? | OPP |
| 2. | Whether the petition is not maintainable, as alleged.  | OPR |
| 3. | Whether the petition suffers from the vice of delay and laches.  | OPR |
| 4. | Whether the petitioner is guilty of suppressio veri.   | OPR |
| 5. | Whether the petitioner is estopped from filing the claim petition by his act and conduct.  | OPR |
| 6. | Relief.  |     |

5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 :	Yes. He is entitled to reinstatement, 50% back-wages and continuity of service from the date of termination of his services.
Issue 2 :	No.
Issue 3 :	No
Issue 4 :	No
Issue 5 :	No
Relief. :	The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issue 1*

6. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on muster roll basis in 1999 and worked as such in Dharampur Division of HPPWD upto July 7, 2005. Also, there is no denying the fact that the petitioner was retrenched by the respondent w.e.f. July 8, 2005 under Section 25N of the Act. What is denied by the respondent is the petitioner's allegation of his having been retrenched unlawfully. But this denial, to my thinking, does not appear to be tenable in view of the materials on record and the facts and circumstances of the case. Section 25N under which the petitioner has been retrenched, appears in Chapter VB of the Act which relates to special provisions relating to lay-off, retrenchment and closure in certain establishments. This section refers to a workman employed in any industrial establishment to which applies Chapter VB of the Act. The applicability of this Chapter is governed by Section 25K which provides that the Chapter shall apply to an industrial establishment (not being an establishment of a seasonal character or in which work is performed only intermittently) in which not less than one hundred workmen were employed on an average per working day for the preceding twelve months. The expression "industrial establishment" is for the purposes of Chapter VB defined by clause (a) of Section 25L, which reads:

##### **"25L (a) "industrial establishment" means-**

- (i) a factory as defined in clause (m) of section 2 of the Factories Act, 1948 (63 of 1948);
- (ii) a mine as defined in clause (j) of sub-section (1) of section 2 of the Mines Act, 1952 (35 of 1952);
- (iii) a plantation as defined in clause (f) of section 2 of the Plantations Labour Act, 1951 (69 of 1951);"

7. The petitioner's Authorised Representative contends with vehemence that Dharampur Division of Public Works Department not being an "industrial establishment" within the meaning of clause (a) of Section 25L, the termination of services of the petitioner by a three months' notice as contemplated under Section 25N of the Act is not lawful.

8. Per contra, the Ld. Dy. District Attorney appearing for the respondent argues that Dharampur Division of Public Works Department falls within the definition of "industrial establishment" and the petitioner's retrenchment made in accordance with the provisions of Section 25N of the Act cannot therefore be said to be unlawful. But this contention, to my mind, does not appear to be holding water. The expression "factory" occurring in clause (a) of Section 25L is defined in Clause 2(m) of the Factories Act, 1948 thus:

##### **"(m) "factory" means any premises including the precincts thereof-**

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, - but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belonging to the armed forces of the Union, railway running shed or a hotel, restaurant or eating place."

9. The respondent's pleadings are non-existent in such averments as may show the Public Works Department to be a "factory" as defined above. Also, there is nothing to suggest that in Dharampur Division of HPPWD wherein was engaged the petitioner, some manufacturing process is/was being carried on with the aid of power, or is ordinarily so carried on. Also, there is nothing to show that in any part of the said Division some manufacturing process is/was being carried on without the aid of power, or is ordinarily so carried on. It is therefore difficult to accept the Ld. Dy. D.A.'s contention that Dharampur Division of HPPWD is an "industrial establishment" within the meaning of Section 25L (a) of the Act and the petitioner's retrenchment under Section 25N of the Act does

not suffer from any illegality. Since Dharampur Division of HPPWD is not proved to be an “industrial establishment” within the meaning of Section 25L(a) of the Act, the petitioner.s Authorised Representative.s aforementioned contention deserves acceptance and is accepted.

10. The petitioner.s Authorised Representative further contends that another count on which his client.s retrenchment under Section 25N of the Act cannot be said to be lawful relates to the illegality committed by the State Government in notifying the Chief Engineer, HPPWD (B&R), Central Zone, Mandi as the specified authority from whom prior permission for retrenchment of the petitioner and other workers is stated to have been obtained under Section 25N (1) (b) of the Act. The said Chief Engineer, according to the Authorised Representative, being the head of HPPWD (B&R) Central Zone, Mandi wherein is comprised the HPPWD Division, Dharampur, could not in law be notified as the specified authority for the purpose of Section 25N (1) (b) of the Act. This contention also, to my thinking, appears to be having force. Section 25N of the Act in its material part reads:

**“25N. Conditions precedent to retrenchment of workmen.-**(1) No workman employed in any industrial establishment to which this Chapter applies, who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until,-

- (i) the workman has been given three months. notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice; and
- (ii) the prior permission of the appropriate Government or such authority as may be specified by that Government by notification in the Official Gazette (hereafter in this section referred to as the specified authority) has been obtained on an application made in this behalf”

(2) An application for permission under sub-section (1) shall be made by the employer in the prescribed manner stating clearly the reasons for the intended retrenchment and a copy of such application shall also be served simultaneously on the workmen concerned in the prescribed manner.

(3) Where an application for permission under sub-section (1) has been made, the appropriate Government or the specified authority, after making such enquiry as it thinks fit and after giving a reasonable opportunity of being heard to the employer, the workmen concerned and the person interested in such retrenchment, may, having regard to the genuineness and adequacy of the reasons stated by the employer, the interests of the workmen and all other relevant factors, by order and for reasons to be recorded in writing, grant or refuse to grant such permission and a copy of such order shall be communicated to the employer and the workmen.

(4) Where no application for permission under sub-section (1) is made, or where the permission for any retrenchment has been refused, such retrenchment shall be deemed to be illegal from the date on which the notice of retrenchment was given to the workman and the workman shall be entitled to all the benefits under any law for the time being in force as if no notice had been given to him.”

11. In the document Ex. RW1/B, Chief Engineer, HPPWD (B&R) Central Zone, Mandi is shown to have been notified by the State Government as specified authority for the purposes of Sections 25F, 25M and 25N of the Act in relation to HPPWD (B&R) Central Zone, Mandi. For terminating the services of the petitioner, the Executive Engineer, B&R Division HPPWD, Dharampur, is stated to have obtained prior permission from the said specified authority under Section 25N (1) (b) of the Act. The question that in view of the facts and circumstances of the case arises is: Whether or not the Chief Engineer, HPPWD (B&R), Central Zone, Mandi could in law be notified as the specified authority by the State Government. The answer, to my mind, is in the negative. The expression “employer” occurring in Section 25N is defined in Clause (g) of Section 2 of the Act thus:

**“(g) “employer” means-**

- (i) in relation to any industry carried on by or under the authority of any department of the Central Government or a State Government, the authority prescribed in this behalf, or where no authority is prescribed, the head of the department;
- (ii) in relation to an industry carried on by or on behalf of a local authority, the chief executive officer of that authority;”

12. The materials on record are not indicative of the respondent (Executive Engineer, B&R Division, HPPWD, Dharampur) who dispensed with the services of the petitioner w.e.f. July 8, 2005 (vide his orders dated July 2, 2005 Ex. RW1/D a copy whereof was sent to the specified authority Cum-Chief Engineer (CZ) HPPWD Mandi for favour of information) having been notified as the authority prescribed, or say the “employer” in relation to the industry

carried on by the Public Works Department in its Dharampur Division. The employer, or say the authority prescribed in relation to the said Division of HPPWD was therefore the head of the department in view of the abovementioned provisions of Clause (g) of Section 2 of the Act. The aforementioned Chief Engineer, who was notified by the State Government as the specified authority for the purposes of Sections 25F, 25M and 25N of the Act, being undeniably the head of HPPWD (B&R), Central Zone, Mandi, was the employer of the petitioner. But the employer and the specified authority cannot in law be one and the same person. In notifying the Chief Engineer as the specified authority, the State Government therefore committed an illegality. More so, when for the sake of fair play and justice the head of the department/zone in which was employed the retrenched workman, ought not to have been notified as the specified authority. Since the Chief Engineer, HPPWD (B&R) Central Zone, Mandi could not in law be notified as the specified authority, the permission granted by him for the retrenchment of the petitioner is decidedly no permission in the eye of law. The petitioner's retrenchment can therefore safely be held to be illegal in view of the abovementioned provisions of sub-section (7) of Section 25N of the Act.

13. The respondent to retrench the petitioner on account of his being surplus ought to have taken recourse to the relevant provisions contained in Chapter VA of the Act, which deals with lay-off and retrenchment. One of the sections enumerated in this chapter is 25F which lays down conditions precedent to retrenchment of workmen. It says:

**“25-F. Conditions precedent to retrenchment of workmen.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice;
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

14. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:

**“25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

- (a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-
  - (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
  - (ii) two hundred and forty days, in any other case....”

15. The petitioner's claim of having worked for more than 240 days in each calendar year from 1999 to July 8, 2005 and completed as many days during the period of 12 calendar months preceding the date of his retrenchment, is not disputed by the respondent. Before dispensing with the services of the petitioner the respondent was therefore obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged in the abovementioned provisions of Section 25F of the Act. But the respondent having failed so to do decidedly violated the said provisions in terminating the services of the petitioner.

16. But even if Dharampur Division of HPPWD wherein was employed the petitioner, or for that matter the entire H.P. Public Works Department is assumed to be a “factory” within the meaning of Section 2(m) of the Factories Act, 1948, or say, an “industrial establishment” as defined under Section 25L of the Act and no fault is found with the State Government's action of notifying the aforesaid Chief Engineer as the specified authority, the petitioner's

retrenchment is still unlawful on account of the violation by the respondent of the principle of "Last Come First Go" as envisaged under Section 25G of the Act. Section 25G of the Act provides:

**"25-G. Procedure for retrenchment.-** Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

17. The petitioner in paragraph 4 of his statement of claim alleged that the workmen namely Subhash Chand, Shashi Kant, Bidhi Chand, Ranjeet Singh, Balak Ram, Dalip Singh, Dharampal and others, who were junior to him, were unlawfully retained in service by the respondent at the time his services were dispensed with and the respondent thus violated the principle of "Last Come First Go" as contemplated under Section 25G of the Act. In reply, the respondent in paragraph 4 averred:

"That the contents of this para partly admitted, and it is submitted that some junior daily wages workers are working in Dharampur Division due to non availability of seniority of workers were transferred from other Division/Sub-Division. The case/seniority has scrutinized again when above facts came to the notice. However, the retrenchment notice to above juniors have also been served who are surplus to the requirement."

18. This reply of the respondent lends assurance only to the petitioner's allegation that certain workmen, who were junior to him, were retained in service at the time his services were dispensed with by the respondent.

19. Further, the petitioner in his affidavit specifically alleged that the workman namely Shashi Kant S/o Bihari Lal, who was engaged on January 1, 2000, was junior to him and retained in service at the time his (petitioner) services were terminated. The respondent's witness Naresh Kumar Sharma, Executive Engineer, HPPWD Division, Dharampur, in his cross-examination as RW1, however, denied the petitioner's suggestion that certain workmen junior to him (petitioner) were retained in service at the time of termination of his services, but admitted to having prepared the seniority list/year-wise mandays chart in respect of the workman namely Shashi Kant S/o Bihari Lal. Ex. PW1/B, according to this said witness, is a true copy of the seniority list/year-wise mandays chart issued by him. This document is demonstrative of Shashi Kant having been engaged as daily waged Beldar in Dharampur Division of HPPWD in the month of January, 2000 and his being in the employ of the respondent till November, 2008. In another seniority list Ex. RW1/C adduced in evidence by the respondent, Shashi Lal S/o Bihari Lal, who figures at serial No.646, is shown to have been engaged on 6.4.1999. The materials on record not being indicative of the said workman Shashi Lal having been engaged before or on the day the petitioner was taken into employ by the respondent, the petitioner's claim of being senior to him (Shashi Lal) deserves acceptance and is accepted. The seniority list Ex. RW1/C is demonstrative of Shashi Lal having been retained in service at the time the petitioner was retrenched. It therefore stands established on record that the workman Shashi Kant (Shashi Lal) who was junior to the petitioner, was retained in service by the respondent at the time the petitioner's services were dispensed with. In retrenching the petitioner; the respondent is thus proved to have violated the provisions of Section 25G of the Act.

20. The petitioner's Authorised Representative contends that the respondent had violated the provision of Section 25H of the Act as well, because Mamta Devi w/o Hans Raj, who was engaged by the respondent as daily waged Beldar in 2000 and retrenched along with the petitioner, was later re-engaged in 2007 without giving the petitioner an opportunity to offer himself for re-employment.

21. Per contra, the Ld. Dy. D.A. argues that Mamta Devi having been engaged on compassionate grounds after the demise of her husband, who was also working in HPPWD, the respondent cannot be said to have violated the provisions of Section 25H of the Act. This contention, to my thinking, appears to be holding water in view of the seniority list Ex. RW1/C which is indicative of Mamta Devi having been re-engaged on compassionate grounds. In view of her having been re-engaged on compassionate grounds, the petitioner's pleadings being non-existent in his allegation of Mamta Devi having been re-engaged after his retrenchment and this allegation of his not being the subject matter of the reference on hand, it is difficult to hold that the respondent had violated the provisions of Section 25H of the Act.

22. Since in retrenching the petitioner, the respondent is proved to have violated the provisions of Sections 25F and 25G of the Act, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were dispensed with. Besides, he is entitled to continuity of service from the date of his retrenchment (July 8, 2005). His claim of being entitled to regularization with the policy of the State Government is, however, not being adjudicated upon, for the same is not the subject matter of the reference.

23. The petitioner in paragraph 15 of his statement of claim averred that he was not gainfully employed anywhere after the termination of his services, and that he was still unemployed. In substantiation of this claim he in his

affidavit inter alia deposed that after his illegal retrenchment he was not gainfully employed anywhere and was still unemployed. There being no rebuttal to this deposition of his, his claim deserves acceptance and is accepted. In view of the facts and circumstances of the case, the petitioner, to my mind, is entitled to 50% back-wages from the date of his unlawful retrenchment. The issue under discussion is accordingly held in his favour and against the respondent.

#### *Issue 2*

24. In view of what has been held under the foregoing issue, the petition is perfectly maintainable to the extent the same relates to the reliefs the petitioner is found entitled to. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

#### *Issue 3*

25. The Ld. Dy.D.A. contends that there being inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the reliefs he prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon.ble High Court of Himachal Pradesh in Divisional Manager, Himachal Pradesh Forest Corporation, Division Sundernagar, District Mandi, H.P. vs. Dilu Ram (CWP No.95/2000 decided on 26.8.2004) wherein it was inter alia held:

“It is well settled that plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a mere hypertechnical defence though reference to the Labour Court can be generally questioned on the ground of delay alone. The provisions of Article 137 of the Schedule to the Limitation Act, 1963 are not applicable to the proceedings under the Act and that the relief under it cannot be denied to the workman merely on the ground of delay (See Ajaib Singh v. Sirhind Co-Op. Marketing-cum-Processing Service Society Ltd. 1999(82)FLR 137 (SC)).

26. Upon an industrial dispute having been raised by the petitioner, the Conciliation Officer-cum-Labour Officer, Mandi appears to have initiated conciliation proceedings. On failure of the conciliation move, the said Officer referred the matter to the Labour Commissioner, Himachal Pradesh, vide his report No.9282 dated 13.10.2007. On the basis of this report, the Labour Commissioner referred the dispute to this Court under Section 10(1) of the Act, vide Notification No.11-23/84(Lab) 1.D/08-Mandi dated September 5, 2008. In view of the period of time that elapsed before the matter came to be referred to this Court, the petitioner who felt aggrieved by his unlawful retrenchment on July 8, 2005, cannot be said to have delayed the steps he took for the redressal of his grievance. His claim therefore does not suffer from the vice of delay and laches. So, the Ld. Dy.D.A.'s aforementioned contention merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

#### *Issue 4*

27. The respondent's allegation that the petitioner is guilty of suppressio veri, does not appear to be having a ring of truth, because the materials on record are not indicative of his having suppressed such fact(s) as may have vital bearing on the case. The Issue on hand is therefore held against the respondent and in favour of the petitioner.

#### *Issue 5*

28. The rule of estoppel is not attracted in this case. The Ld. Dy. D.A. appearing for the respondent has also not been able to show how the petitioner is estopped from filing the claim petition. The issue under discussion is therefore held against the respondent and in favour of the petitioner.

#### RELIEF

29. Judged in the light of my findings on the issues above, particularly issue 1, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement with 50% back-wages and continuity of service from the date of his unlawful retrenchment (July 8, 2005). The said 50% back-wages shall be computed on the basis of the last drawn wage or the minimum wages permissible under the Minimum Wages Act whichever is higher till the date of reinstatement of the petitioner. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion consigned to records.

Announced in the open Court today this 31st day of March, 2009.

By order,  
S.S.SEN,  
Presiding Judge,  
Labour Court-cum-Industrial Tribunal, Dharamshala, H.P.

IN THE COURT OF SHRI S.S. SEN PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL  
DHARAMSHALA, H.P.

Ref No. : 27/2005

Date of Institution : 17. 2. 2005

Date of decision : 26.12.2008

Shri Yudhvair Singh S/o Shri Wazir Chand, Village Chhuhra, P.O. Tilira, Tehsil Sarkaghat, District Mandi, H.P.

....Petitioner

Versus

The Executive Engineer, H.P.P.W.D., Electrical Division, Mandi, H.P.

. ....Respondent

Reference under section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. S.S. Sippy, AR.

For the Respondent : Sh. H.S. Dhiman, Ld. Dy.D.A.

AWARD

1. The following reference was received for adjudication from the appropriate Government:

***“Whether the termination of service of Sh. Yudhvair Singh S/o Sh. Wazir Chand Daily paid Labour by The Executive Engineer, HPPWD, Electrical Division, Mandi, H.P. w.e.f. 25.2.2001 without any notice, chargesheet, enquiry and without compliance of Section 25-F and 25-H of the Industrial Dispute Act, 1947 on completion of 240 days continuous service is legal and justified? If not, to what relief and consequential service benefit including back wages seniority and amount of compensation of Sh. Yudhvair Singh is entitled to?”***

2. On notice, the petitioner filed his statement of claim wherein he averred that he was engaged by the respondent as daily waged Beldar on January 13, 1999, and that he worked as such upto February 24, 2001. On February 25, 2001, his services were, however, orally terminated by the respondent. Claiming to have worked for more than 240 days “in each completed year of service”, the petitioner further averred that in dispensing with his services, the respondent violated the provisions of Section 25-F of the Industrial Disputes Act, 1947 (the Act, for short) because no prior notice was given to him nor was he paid retrenchment compensation. Besides, the respondent violated the principle of „last come first go. as envisaged under Section 25-G of the Act as certain workmen junior to him were retained in service at the time of termination of his services. The petitioner therefore prayed for a direction to the respondent to reinstate him with full back-wages and continuity of service.

3. Admitting the petitioner's claim of having been engaged as daily waged Beldar on January 13, 1999, the respondent in his reply averred that he (petitioner) was engaged on muster roll No.316 for the period from January 13, 1999 to January 31, 1999 as against the work of repair and maintenance of electrical installation of a Government building under the Electrical Sub Division, Mandi. After February, 2001, his services, according to the respondent, were dispensed with on account of non-availability of work and funds. Disputing the petitioner's claim of having worked for more than 240 days „in each completed year of service., the respondent averred that he had worked for 221 days in 1999, 216 days in 2000 and 56 days in 2001. He having thus not completed 240 days during the period of 12 calendar months preceding the date of his removal from service, the respondent was not obliged to serve him with one month's notice and pay him retrenchment compensation as envisaged under Section 25-F of the Act. As for the allegation of violation of the provisions of Section 25-G of the Act, the respondent averred that “the junior person to the petitioner has only engaged on the basis of court decision”. It is also averred that the petitioner is estopped from filing the claim petition by his act and conduct, and that the petition is barred by delay and laches.

4. On the pleadings of the parties, the following issues were framed for determination by my Ld. Predecessor-in-office:

1. Whether the services of the petitioner were terminated by the respondent w.e.f. 2.2.2001 without notice, charge sheet and without compliance of section 25-F and 25-H of the Industrial Disputes Act, 1947 in an improper and un-justified manner as alleged?

OPP



2. If issue No.1 is proved in the affirmative, what service benefits the petitioner is entitled to? OPP
3. Whether the petitioner was disengaged after 2001 due to the reason for non-availability of the work and funds as alleged? OPR
4. Whether the petitioner is estopped to file the petition by his act and conduct as alleged? OPR
5. Whether the petition is not within time as alleged? OPR
6. Relief.
5. For the reasons to be recorded hereinafter, my findings on these issues are as under:

Issue 1 : Yes partly.  
 Issue 2 : He is entitled to reinstatement and continuity of service from the date of his retrenchment.  
 Issue 3 : No  
 Issue 4 : No  
 Issue 5 : No  
 Issue 6 : The petition allowed partly per operative part of the award.

#### REASONS FOR FINDINGS

##### *Issues 1 And 3*

6. These issues being inter-linked are taken up together.

7. There is no gainsaying the fact that the petitioner was engaged by the respondent as daily waged Beldar on January 13, 1999, and that he worked as such upto February 24, 2001. On February 25, 2001, his services were orally terminated by the respondent. The reason for the termination of his services, according to the respondent, was non-availability of work and funds. But this reason, to my thinking, does not appear to be real, because nowhere in his statement as RW1 did the respondent.s witness Rajinder Kumar Arora, then Executive Engineer, (Electrical Division) HPPWD, Mandi, maintain that the services of the petitioner were dispensed with on account of non-availability of work and funds. He rather testified that the petitioner had abandoned the job in 2001. The reason for his abandoning the job, according to the respondent.s said witness, was the allotment of less money to the Public Works Department and the resultant reduction of work on account of the Government policy to allot budget directly to various other departments. But whether or not there was indeed no work and budget available at the time the services of the petitioner were dispensed with on February 25, 2001, is anybody.s guess. I am therefore not disposed to accept the respondent.s claim that the services of the petitioner were terminated on account of non-availability of budget and work. But even if the respondent.s claim is assumed to be true, the cessation of work, which resulted in the termination of services of the petitioner, not being due to any fault on his part, his case squarely falls within the ambit of Section 25-B of the Act, which defines „continuous service.

8. The petitioner.s claim of having worked for more than 240 days „in each year of service., to my mind, does not appear to be tenable in view of the Mandays Chart Ex. RW1/A, which shows him to have worked for 221 days in the year 1999, 216 days in 2000 and 56 days in 2001. Also, this document is not indicative of his having worked for 240 days during the period of 12 calendar months preceding the date of his retrenchment. Section 25-F of the Act, which is alleged to have been violated by the respondent, provides:

**“25-F. Conditions precedent to retrenchment of workman.-** No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month.s notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days. average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

9. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression "continuous service" has been defined under Section 25-B of the Act, which in its material part reads:

**"25B. Definition of continuous service. For the purposes of this Chapter,-**

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

- (i) one hundred and ninety days in the case of a workman employed below ground in a mine; and
- (ii) two hundred and forty days, in any other case...."

10. Since the petitioner's claim of having been in continuous service for not less than one year, or say his having completed 240 days during the period of 12 calendar months preceding the date of his removal from service is found to be far from truth, he is not entitled to the protection of the abovementioned provisions of Section 25-F of the Act. In dispensing with his services without serving him with one month's notice and paying him retrenchment compensation, the respondent cannot therefore be said to have committed breach of the said provisions.

11. However, in terminating the services of the petitioner, the respondent, to my mind, appears to have violated the provisions of Section 25-G of the Act, which reads:

**"25-G. Procedure for retrenchment.** – Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

12. The seniority list Ex. PA is indicative of eleven workmen namely Jeet Singh, Ajay Kumar, Ram Krishan, Smt. Suman, Surya Bahadur, Harish Kumar, Shayam Lal, Murari Lal, Neka Ram, Baldev Singh and Rakesh Kumar, whose names figure at serial nos. 26, 27, 28, 29,30,31,32,33,34,35 and 36 respectively, being junior to the petitioner. Of these workmen, three namely Neka Ram, Murari Lal and Jeet Singh are stated to be still in service. The respondent's aforementioned witness Rajinder Kumar Arora in his cross-examination as RW1 categorically admitted the petitioner's suggestions that Neka Ram, Murari Lal and Jeet Singh were junior to him, and that they were also removed from service but later re-engaged on the same post. Having admitted these suggestions, Rajinder Kumar Arora, however, hastened to add that the aforesaid three workmen were re-engaged on the basis of the orders of Labour Court. The point of time when Neka Ram, Murari Lal and Jeet Singh, who are undeniably junior to the petitioner, were removed from service, is not known. In case their services were terminated after the services of the petitioner, were dispensed with, they having been retained in service at the time of termination of the services of the petitioner, the respondent violated the abovementioned provisions of Section 25-G of the Act. Section 25-H of the Act provides: "25 (H). Re-employment of retrenched workman. – Where any workmen are retrenched, and the employer proposes to take into his employ any persons, he shall, in such manner as may be prescribed, give an opportunity [to the retrenched workmen who are citizens of India to offer themselves for reemployment, and such retrenched workmen] who offer themselves for reemployment shall have preference over other persons".

13. In case the aforesaid three workmen (Neka Ram, Murari Lal and Jeet Singh) who are claimed to have been re-engaged in compliance with the orders of Labour Court, were removed from service on the same day as the petitioner or before the termination of services of the latter, the respondent can be said to have violated the abovementioned provisions of Section 25-H of the Act, because there is nothing to suggest that before re-engagement of the said workmen, the petitioner was given an opportunity to offer himself for re-employment.

14. The upshot therefore is that in dispensing with the services of the petitioner, the respondent either violated the provisions of Section 25-G of the Act or Section 25-H of the Act. However, he is not proved to have violated the provisions of Section 25-F of the Act. Both the issues under discussion are held accordingly.

*Issue 2*

15. In view of what has been held under the foregoing issues, the petitioner is entitled to reinstatement in the same capacity as in which he was working at the time his services were terminated. Besides, he is entitled to continuity of service from the date of his unlawful retrenchment (February 25, 2001). However, he is not entitled to back-wages, because nowhere in his pleadings or evidence did he maintain that he remained idle or was not working for gain after the termination of his services. The issue under discussion is held accordingly.

*Issue 4*

16. The facts and circumstances of this case do not attract the rule of estoppel. The Ld. counsel for the respondent has also not been able to show how the petitioner was estopped from filing the claim petition by his act and conduct. The issue on hand is accordingly held in favour of the petitioner and against the respondent.

*Issue 5*

17. As no time limit is prescribed by law for raising an industrial dispute, the respondent's claim that the petition is barred by time, merits rejection and is rejected. The issue under discussion is accordingly held against the respondent and in favour of the petitioner.

**RELIEF**

18. Judged in the light of my findings on the issues above, particularly issues 1 and 3, the petition succeeds partly and is allowed in part. Accordingly, the petitioner is held entitled to reinstatement in the same capacity as in which he was working at the time of termination of his services (February 25, 2001). Besides, he is held entitled to continuity of service from the date of his unlawful retrenchment (February 25, 2001). He is, however, held not entitled to any back-wages. The respondent is directed to re-engage the petitioner within a period of 90 days from today. The reference is answered accordingly. A copy of this award be sent to the appropriate Govt. for publication in the official gazette and the file after completion be consigned to the record room.

Announced in the open Court today this 26th day of December, 2008.

By order,  
S.S.SEN,

*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

